EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 307 (2016)
04.10.2016

Judgments of 4 October 2016

The European Court of Human Rights has today notified in writing 32 judgments[1]:

18 Chamber judgments are summarised below; for four others, in the cases of *Petar Matas v. Croatia* (application no. 40581/12), *T.P. and A.T. v. Hungary* (nos. 37871/14 and 73986/14), *Yaroslav Belousov v. Russia* (nos. 2653/13 and 60980/14) and *Rivard v. Switzerland* (no. 21563/12), separate press releases have been issued;

ten Committee judgments, which concern 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 (*).

Antunović v. Croatia (application no. 66553/12)

The applicant, Miro Antunović, is a Croatian national who was born in 1956 and lives in Sibinj (Croatia). The case concerned his complaint about the courts' refusal to hear his claim for salary arrears.

In September 2008 Mr Antunović, a civil servant, was found guilty of severe breaches of his official duties and ordered to pay a fine. His employer, the City of Slavonski Brod, subsequently dismissed his application for reimbursement of his salaries withheld during the period (from September 2007 to September 2008) when he had been suspended. The City of Slavonski Brod also dismissed his appeal in December 2008, informing him that he could bring an administrative action against it. However, the High Administrative Court declared his administrative action inadmissible because it did not have jurisdiction and stated that it was for an ordinary municipal court to hear Mr Antunović's case.

Mr Antunović then brought a constitutional complaint, which was dismissed in July 2012.

In September 2012 he also brought a civil action for reimbursement of salary arrears in the Slavonski Brod Municipal Court, but his claim was dismissed as time-barred. This judgment was upheld on appeal in August 2013.

Relying on Article 6 § 1 (access to court) of the European Convention on Human Rights, Mr Antunović complained that the High Administrative Court had refused to examine his action on the merits and that he had been wrongly told to resort to an administrative action.

No violation of Article 6 § 1

[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

Travaš v. Croatia (no. 75581/13)

The applicant, Petar Travaš, is a Croatian national who was born in 1975 and lives in Rijeka (Croatia). The case concerned his dismissal from two teaching posts, on the grounds that he had entered into a second marriage.

Mr Travaš is a professor of theology. He was issued with a canonical mandate to teach Catholic religious education by the Rijeka Archdiocese, and in September 2003 he was offered an indefinite contract to teach the subject in two State high schools – where his salary was paid by the State.

Mr Travaš had been married in a religious ceremony in December 2002. However, he and his former wife became divorced, and Mr Travaš married another woman in a civil ceremony in March 2006.

The following month, Mr Travaš was informed by the Rijeka Archdiocese that he was now disqualified from teaching religious education, because his new civil marriage – entered into whilst he was still married to his first wife in the eyes of the Church – had been contrary to Christian doctrine. After considering Mr Travaš' explanation of the situation, the Archdiocese withdrew his canonical mandate in August 2006. Eight days later, being unable to find another suitable post for him or to offer him an alternative post within the schools, the schools dismissed Mr Travaš from his teaching job on the grounds that he could no longer be a teacher of Catholic religious education without a canonical mandate.

Mr Travaš initiated a civil claim, challenging the decisions on his dismissal. However, on 22 February 2007 his claim was rejected by the Opatija Municipal Court, which found that the teaching of Catholic religious education without a canonical mandate was prohibited under Croatian law. Mr Travaš' appeal to the Rijeka County Court was dismissed, as was a further appeal to the Supreme Court, and an appeal to the Constitutional Court. In its judgment of 27 May 2013, the Constitutional Court held in particular that an Agreement on education and cultural affairs between the Republic of Croatia and the Holy See was an international treaty; that an act ratifying the Agreement had made it part of the internal legal order of Croatia; that it took precedence over domestic statutes; and that it required Catholic religious education to be taught only by teachers with a canonical mandate. The termination of Mr Travaš' employment contract had therefore been entirely lawful.

Relying in particular on Article 8 (right to respect for private and family life), Mr Travaš complained that he had been dismissed from his teaching posts in public service solely on the grounds of an intimately personal event (his second marriage), and that this had been an extreme and disproportionate measure affecting his right to a private and family life.

No violation of Article 8

Žaja v. Croatia (no. 37462/09)

The applicant, Miljenko Žaja, is a Croatian national who was born in 1958 and lives in Prague (the Czech Republic). The case concerned his conviction of an administrative offence for importing a car into Croatia without paying customs duties.

In June 2008 Mr Žaja entered Croatia in a car which he had just bought in Germany and which he had registered in the Czech Republic, having been granted a permanent residence permit there since February 2008. He claims that the purpose of his visit to Croatia was to de-register his domicile there. Shortly afterwards, while driving in Zagreb, he was stopped by the police who found it suspicious that a Croatian national was driving a car with foreign licence plates. They impounded the car and reported the matter to the Croatian Customs Administration.

In a first set of administrative proceedings he was found liable to pay taxes on the importation of his vehicle into Croatia and in December 2008 was ordered to pay 527,747.08 Croatian kunas

(approximately 71,251 euros). As Mr Žaja did not pay, the Customs Administration subsequently issued a decision confiscating his car and ordering its sale with a view to collecting the debt.

In the meantime, a second set of administrative offence proceedings were brought against Mr Žaja and in July 2008 he was found guilty of importing his car into Croatia without paying customs duties. The courts notably found that he had retained his domicile in Croatia despite residing abroad and thus did not qualify for an exemption from paying customs duties under the relevant international agreement (the Istanbul Convention on Temporary Admission). His subsequent appeal before the High Court for Administrative Offences was dismissed. He then lodged a constitutional complaint, arguing in particular that the High Court had misinterpreted the terminology "persons resident in a territory other than that of the temporary admission" in the Istanbul Convention under which he could have been exempted from customs duties. Notably, the term was understood as meaning persons having registered domicile (in his case Croatia) rather than having habitual residence (in his case, the Czech Republic). His complaint was, however, dismissed in April 2009 on the ground that his constitutional rights had not been breached.

Relying in particular on Article 7 (no punishment without law), Mr Žaja alleged that, due to the ambiguity of the terminology under the relevant international agreement and its interpretation by the domestic authorities, he had been unable to foresee that his entering Croatia with a car that he had bought abroad would amount to an administrative offence.

Violation of Article 7

Just satisfaction: The application did not submit any claim for just satisfaction.

Just satisfaction

Noreikienė and Noreika v. Lithuania (no. 17285/08)
Tunaitis v. Lithuania (no. 42927/08)

These cases dealt with the question of just satisfaction following judgments by the European Court of Human Rights about deprivation of property without adequate compensation.

The applicants, Daina Noreikienė, Algirdas Noreika and Vytautas Tunaitis, are Lithuanian nationals who were born in 1965, 1961 and 1959 and live in Ramučiai and Kaunas (Lithuania).

In the first case, the local authorities assigned in 1989 a plot of land measuring 0.03 hectares to Mr Tunaitis for the construction of a house. The city council confirmed the validity of that decision in 1991 and in 1994 Mr Tunaitis bought the land for a nominal price (approximately 28 euros (EUR)). In 2005, he signed a land purchase agreement and the plot was subsequently registered in the Land Registry in his name.

In the second case, the local authorities assigned in 1993 a plot of land measuring 1.97 hectares to Ms Noreikienė and Mr Noreika, a wife and husband, for individual farming. In 1996, the county administration authorised Ms Noreikienė to purchase the land for a nominal price (approximately EUR 1.7). In 2004 she signed a land purchase agreement and the plot was subsequently registered in the Land Registry in the couple's joint name.

In both cases a third party brought a civil claim seeking restoration of their ownership rights to the land arguing that they had already submitted requests for restitution of property and, as such, the land had been assigned and later sold to the applicants unlawfully. The plots in question were thus returned to the state and the applicants were awarded the equivalent of EUR 35 in the case of Mr Tunaitis and EUR 37 in the case of Ms Noreikienė and Mr Noreika. The applicants lodged cassation appeals which the Supreme Court refused to hear (in 2008 in the first case and in 2007 in the second case), holding that the appeals did not raise any important legal issues.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained that they had been deprived of their property by decisions of the domestic courts and that they had not received adequate compensation.

In its principal judgments of 24 November 2015 the Court held, in both cases, that there had been a violation of Article 1 of Protocol No. 1.

Today's judgments concerned the question of the application of Article 41 (just satisfaction) of the European Convention.

Just satisfaction: The Court decided to strike the applications out of its list of cases insofar as the question of just satisfaction was concerned, taking note of the friendly settlements reached between the Lithuanian Government and the applicants in both cases.

Yusiv v. Lithuania (no. 55894/13)

The case concerned an allegation of police brutality against a minor.

The applicant, Maryan Yusiv, is a Ukrainian national who was born in 1995 and has lived in Kaunas (Lithuania) since 2006.

On 22 October 2011 Mr Yusiv, 16 years old at the time, was on his way to see his girlfriend when he was stopped by three police officers who, together with five other officers, were searching for a group of several young men who had reportedly robbed a man near the railway station. Mr Yusiv tried to escape and was arrested. He was then taken to the local police station and charged with the administrative offence of disobeying the police. Upon his release, he told his mother that one of the police officers had hit him with a truncheon numerous times while he was being held in the police car and that another police officer had then threatened him with an electroshock device at the police station.

Mr Yusiv's mother complained to the police and prosecuting authorities a few days later, alleging that her minor son had been mistreated by the police during his arrest and detention. Her son was immediately examined by a court-appointed medical expert who reported that her son had sustained at least 18 blows from a hard blunt object.

The authorities opened a preliminary inquiry on the day of the mother's complaint and a pre-trial investigation was opened two months later. The investigator interviewed the police officers present during the incident, as well as Mr Yusiv and his mother. Mr Yusiv denied resisting or insulting the officers in any way; the officers stated that he had tried to escape and then violently resisted his arrest. In September 2012 another court medical expert examined Mr Yusiv's medical file and confirmed the findings of the previous report. In December 2012 the Kaunas City Prosecutor decided to discontinue the pre-trial investigation on the ground that the physical force used against Mr Yusiv during his arrest had been necessary, as shown in the consistent statements made by the police officers. This decision was then upheld by the Kaunas District Court (and ultimately, in April 2013, by the Kaunas Regional Court) on the ground that there had been no objective evidence that the police officers had exceeded their legal powers and that the pre-trial investigation had been thorough and comprehensive. A request by Mr Yusiv's mother to reopen the investigation was rejected on the grounds that there were no relevant new circumstances.

In the meantime, in May 2012 Mr Yusiv was found guilty of the administrative offence of insulting and disobeying police officers and given a fine.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Yusiv complained of excessive use of force by the police during his arrest and of the authorities' ensuing failure to conduct an effective and objective investigation into his allegations.

Violation of Article 3 (inhuman treatment)

Violation of Article 3 (investigation)

Just satisfaction: 15,000 euros (EUR) (non-pecuniary damage) and EUR 1,872 (costs and expenses)

Dorota Kania v. Poland (no. 2) (no. 44436/13)

The applicant, Dorota Kania, is a Polish national who was born in 1963 and lives in Warsaw. The case concerned Ms Kania's complaint about her conviction for writing articles accusing a Polish academic of having been an informant for the communist secret police.

From April to August 2007 Ms Kania, a journalist for the weekly magazine *Wprost*, published three articles alleging that the rector of the University of Gdańsk had been a long-term informant for the communist secret services. The rector thus brought a private bill of indictment against her for libel and she was found guilty as charged in February 2012. The first-instance court notably found that Ms Kania had failed to show proper journalistic diligence when writing the articles. In particular, she had published the first article without meeting the rector in person or providing some factual basis for her allegations. Indeed, she had only actually obtained access to official files containing information about the communist secret services after publication of her first article and those files had noted the rector's unwillingness to become an informant. These findings were upheld on appeal in September 2012 and Ms Kania was ordered to pay a fine of 85 euros as well as the rector's costs.

Relying on Article 10 (freedom of expression), Ms Kania complained about her conviction for libel, arguing that her articles had been based on reliable sources and that the issue of Polish academics' collaboration with the communist secret services was a matter of general public concern.

No violation of Article 10

Klibisz v. Poland (no. 2235/02)

The applicant, Andrzej Klibisz, is a Polish national who was born in 1968 and is currently detained in Włocławek Prison (Poland). The case concerned the length of the criminal proceedings against Mr Klibisz, in addition to the lawfulness and conditions of his detention.

In August 1995 the Chief Prosecutor of Lithuania made a request to the Polish prosecution authorities that they initiate a criminal investigation against Mr Klibisz, who had been charged in Lithuania with a murder and an attempted murder allegedly committed in Vilnius in 1994, as well as for illegal possession of weapons. Following a decision of the Warsaw Regional Prosecutor in March 1996, he was arrested and put into custody. This decision was upheld by the Warsaw Regional Court, though neither the applicant nor his lawyer were allowed to attend the hearing or access the case file. Subsequently, Mr Klibisz's detention was extended by numerous consecutive court decisions and all of his applications for release were rejected.

In October 1998 the Warsaw Regional Court convicted Mr Klibisz of murder, attempted murder and illegal possession of weapons. He was sentenced to 25 years' imprisonment and to ten years' deprivation of civic rights in a revised decision of the court in February 2001. The Supreme Court dismissed Mr Klibisz's cassation appeal, and in May 2004 his conviction became final.

During the criminal proceedings against him, Mr Klibisz lodged 30 complaints about the alleged breach of his right to trial within a reasonable time, and submitted several motions for compensation on the grounds that his detention had been unlawful. He also claimed that several of the judges who had decided on the extension of his detention had not been impartial.

Throughout his continuous detention from 1996 onwards, Mr Klibisz was transferred across the country from one detention facility to another at least 44 times. Some of the detention facilities were located as far as 300 km from his hometown. He claimed that for most of his detention he was

held in overcrowded, badly-lit and unventilated cells, with the right to only one hour of daily outdoor exercise and to one shower per week.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Klibisz complained that the conditions of his detention in general were inadequate. He also claimed that his confinement under the high security regime constituted inhuman and degrading treatment.

Violation of Article 3 – concerning the detention of Mr Klibisz in 2004 and 2010 under a high-security regime

Just satisfaction: EUR 3,500 (non-pecuniary damage)

Do Carmo de Portugal e Castro Câmara v. Portugal (no. 53139/11)*

The applicant, Carlos do Carmo de Portugal e Castro Câmara, is a Portuguese national who was born in 1957 and lives in Lisbon. The case concerned his criminal conviction for defaming the president of a public institution.

In March 2006 the applicant, a university professor who previously worked for the Portuguese Meteorolgoical Institute ("the IM"), published an opinion article in the national newspaper *O Independente* explaining the management and financial problems he had encountered when running a project developed by the IM and co-funded by an EU Agency. In his article, he criticised in particular the President of the IM, referring to him as "a petty liar" and "a poor wretch". The President of the IM thus lodged a criminal complaint against the applicant for defamation. In July 2010 the applicant was convicted of aggravated defamation, the courts characterising his statements in the article as a personal attack on the President of the IM and an insult to his honour and reputation. He was sentenced to fines totalling 2,000 euros (EUR) and ordered to pay the plaintiff EUR 3,000. This judgment was upheld on appeal in February 2011.

Relying on Article 10 (freedom of expression), the applicant complained that his criminal conviction had been unnecessary and a disproportionate interference with his freedom of expression.

Violation of Article 10

Just satisfaction: EUR 5,000 (pecuniary damage), and EUR 2,500 (costs and expenses)

Revision

Samoilă v. Romania (no. 19994/04)

The case concerned the applicant's alleged lack of access to a court in the context of the proceedings to wind up the Romanian People's Bank and Credit Cooperative.

The applicant, Gheorghe Samoilă, was a Romanian national who was born in 1930 and lived in Constanţa (Romania). He was retired and held a savings account with the Romanian People's Bank and Credit Cooperative, which subsequently went into liquidation.

In 2002 Mr Samoilă brought a court action for repayment of the amount owed to him by the debtor company. The Romanian courts dismissed his claims for failure to pay the stamp duty. Mr Samoilă and the company's other creditors had been informed on radio and television and in the national press of the need to lodge their statements of claim and of the corresponding formalities, as the liquidator had maintained that it was impossible to notify each of the 60 thousand or so creditors individually, most of whom were small individual savers.

Relying in particular on Article 6 § 1 (right to a fair hearing), Mr Samoilă alleged in particular an infringement of his right of access to a court.

In a judgment of 16 July 2015 the Court found a violation of Article 6 § 1 (access to a court) and awarded Mr Samoilă 3,600 euros (EUR) in respect of non-pecuniary damage.

On 18 November 2015 the Government submitted a request for revision of the judgment, informing the Court that they had learnt on 3 November 2015, during the procedure for execution of the judgment, that Mr Samoilă had died on 27 September 2013 while the proceedings were pending before the Court. They therefore requested that the application be struck out of the list on the basis of Article 37 § 1 of the Convention, arguing that the applicant's heirs had not informed the Court of his death and of their intention to continue the proceedings.

In its judgment of today the Court decided to **revise** its judgment of 16 July 2015 and to **strike the application out** its list of cases.

Abdulkhadzhiyeva and Abdulkhadzhiyev v. Russia (no. 40001/08)

The applicants, Malika Abdulkhadzhiyeva and, her brother-in-law, Ramzan Abdulkhadzhiyev, are Russian nationals who were born in 1953 and 1957 respectively and live in the village of Savelyevskaya, in the Naurskiy District of the Chechen Republic (Russia). The case concerned their complaint that Russian servicemen had shot and wounded them, and stolen their cattle.

On 8 October 1999 the applicants' village, under the control of federal troops due to a counterterrorist campaign, came under artillery fire. The applicants and their neighbours thus requested the military's permission to pass through to the field where their cattle were pastured to retrieve them. They allege that the servicemen agreed to let them pass, but then opened fire on them. Wounded, they fell to the ground and could not get up without the servicemen subjecting them to further gunfire. The servicemen also shot dead a civilian who tried to intervene. After a few hours, the servicemen approached, blindfolded the applicants and took them to the premises of their military unit stationed in the vicinity. In the meantime, one of their neighbours had managed to crawl away and inform the head of the local administration about the incident. He went to the military unit and had the applicants released. The applicants' cattle, which remained under the control of the servicemen, were never returned to them.

The applicants lodged an official complaint about the incident in July 2000 when the local law-enforcement bodies and the courts had started functioning again in their district. A criminal investigation was thus launched into the applicants' allegations in October 2000 and the applicants were granted victim status in the criminal case, the relevant decisions acknowledging that they had been wounded and their cattle stolen. The applicants and their neighbours were also interviewed and gave a detailed and consistent description of the servicemen (and their military unit) who they alleged had attacked them. However, the proceedings, suspended and resumed on several occasions with the supervisory authorities criticising the investigators' failure to have even taken basic steps in the investigation, are currently still pending.

The Government did not contest the applicants' allegation that they had been attacked and lost their cattle, but denied the Russian servicemen's involvement, submitting that it had not been possible to identify those responsible for the attack.

Relying on Article 2 (right to life), the applicants alleged that they had been attacked and wounded by Russian servicemen in October 1999 and that the authorities had failed to carry out an effective investigation into the incident. Further relying on Article 1 of Protocol No. 1 (protection of property), they also complained about the loss of their cattle. Lastly, they alleged under Article 13 (right to an effective remedy) that they had had no effective remedies at their disposal with which to complain about the attack, the related investigation or the loss of their livestock.

Violation of Article 2 (right to life) in respect of both applicants
Violation of Article 2 (investigation)

Violation of Article 1 of Protocol No. 1
Violation of Article 13 combined with Article 2 and with Article 1 of Protocol No. 1

Just satisfaction: EUR 12,000 to Ms Abdulkhadzhiyeva and EUR 3,000 EUR to Mr Abdulkhadzhiyev in respect of pecuniary damage, and EUR 30,000 to Ms Abdulkhadzhiyeva and EUR 10,000 EUR to Mr Abdulkhadzhiyev in respect of non-pecuniary damage.

Anna Popova v. Russia (no. 59391/12)

The applicant, Anna Popova, is a Russian national who was born in 1964 and lives in Chelyabinsk (Russia). The case concerned her complaint that she had been deprived of ownership of her flat without compensation and that she had been threatened with eviction.

Ms Popova bought a flat in Chelyabinsk (Russia) in June 2011. However, in December 2011 a district court annulled her title to the flat, transferring it to the local municipality, ordered her eviction and ruled that the person who had sold Ms Popova the flat should return the sum she had paid for it. The reason for this was that the municipality had obtained information from the registration service in February 2011 that the flat was no longer municipality property and, following an investigation, had discovered that the flat had in fact been fraudulently sold three times between January and June 2011. The district court judgment against Ms Popova was upheld on appeal, on the ground that she should have had doubts about buying a flat which had been resold three times within five months.

Ms Popova sued the State, alleging that she had bought a flat from a person who had no right to sell it to her due to failings on the part of the registration services; her claim was unsuccessful.

The decision in her favour ordering the person who had sold Ms Popova the flat to return her payment remains unenforced to date.

Ms Popova is apparently still living in the flat.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), she complained about the loss of her property without compensation and her threatened eviction. She alleged in particular that the authorities had not brought proceedings for repossession of the flat as soon as possible after they had discovered the fraud, and as a result the flat had continued to be resold unlawfully.

Violation of Article 1 of Protocol No. 1

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

Klimov v. Russia (no. 54436/14)
Maylenskiy v. Russia (no. 12646/15)
Piskunov v. Russia (no. 3933/12)

All three cases concerned allegations of inadequate medical care in detention.

The applicants in the first two cases, Vladimir Klimov and Artem Maylenskiy, both now deceased, were Russian nationals who were born in 1967 and 1983, respectively. Mr Klimov lived before his arrest in the town of Yoshkar-Ola in the Mariy El Republic (Russia) and Mr Maylenskiy lived in Verkhnyaya Pyshma, Sverdlovsk Region (Russia). The applicant in the third case, Nikolay Piskunov, is also a Russian national and was born in 1955. He is currently being detained in Krasnoyarsk (Russia).

In April 2012 Mr Klimov, who was serving a 15-year sentence for murder, was diagnosed with kidney cancer. Medical panels subsequently confirmed this diagnosis on three occasions, comparing his medical condition against a list of illnesses provided for by Government decree which could have warranted his release. All his requests for release were, however, rejected by the courts on the

ground that he was a particular danger to society and, in any case, was regularly receiving symptomatic treatment for his illness with anaesthetics. He was transferred to a prison hospital by court order in October 2014. He started receiving cancer-related treatment in December 2014, but died in April 2015.

Mr Maylenskiy was convicted of murder in January 2014 and sentenced to ten years' imprisonment. Already suffering from advanced HIV and tuberculosis when arrested in May 2012, he was admitted to the medical wing of his remand prison and prescribed with anti-tuberculosis treatment. However, a drug susceptibility test in January 2013 showed that the drugs he was taking were totally ineffective and in April 2013 his treatment was altered. In September 2014 a medical panel, assessing his condition against the list of illnesses in the Government decree, found him eligible for early release on health grounds. His application for release was however rejected by the courts due to his prior convictions and his failure to reform. He was eventually released in August 2015 and was admitted to a civilian hospital where he died in October 2015.

In the first two cases the European Court of Human Rights (ECtHR) decided to apply interim measures under Rule 39 (in November 2014 and March 2015, respectively), indicating to the Russian Government that the applicants should immediately be examined by independent medical experts. The Government responded by submitting a number of documents (including the applicants' medical history, reports by the medical panels, certificates, reports and statements), asserting that the applicants' medical treatment in detention corresponded to their needs.

Both Mr Klimov and Mr Maylenskiy were examined by independent doctors at the request of their lawyers: their reports concluded that the medical care both men were receiving in detention was inadequate.

In the third case, Mr Piskunov was found guilty of incitement to murder in May 2012 and sentenced to five years' imprisonment. He started experiencing leg and back pain in May 2013. The detention authorities ignored his complaints and he therefore took painkillers supplied by his relatives. He was eventually diagnosed with prostate cancer in January 2014 after being sent to a civilian clinic for a scan. Between 2011 and 2014 he complained to various authorities about the quality of his medical care in detention, without success. A report by a medical panel subsequently concluded that he should be released on medical grounds, but a local court dismissed his application for release on the ground that he had been receiving adequate treatment in detention. This decision was then quashed on procedural grounds and the case was remitted for fresh consideration in December 2014. There is however no official information as regards the outcome of these proceedings or about his subsequent medical treatment.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), all three applicants alleged that their medical care in detention was inadequate. Also relying on Article 34 (right of individual petition), the applicants in the first two cases alleged that the Russian Government had failed to have them examined by independent doctors in breach of an ECtHR interim measure. Mr Piskunov also complained that he had no effective remedies for his complaints either about his inadequate medical care in detention or about the conditions of his detention, in breach of Article 13 (right to an effective remedy).

- ***Klimov*** case:

Violation of Article 34
Violation of Article 3 (inhuman and degrading treatment)

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 1,600 (costs and expenses) to Ms Artemyeva, the sister of Mr Klimov

- ***Maylenskiy*** case:

Violation of Article 34

Violation of Article 3 (inhuman and degrading treatment)

Just satisfaction: EUR 20,000 (non-pecuniary damage) to Ms Maylenskaya, the mother of Mr Maylenskiy

- ***Piskunov*** case:

Violation of Article 13
Violation of Article 3 – on account of the quality of medical treatment in detention

Just satisfaction: EUR 12,000 (non-pecuniary damage) and EUR 1,440 (costs and expenses)

Šmajgl v. Slovenia (no. 29187/10)

The applicant, Rudolf Šmajgl, is a Slovenian national who was born in 1959 and is currently detained in Dob prison (Slovenia).

The applicant was engaged in a business providing online sexual services, and a dispute arose between him and one of his Netherlands business partners. On 18 September 2001, a meeting was arranged between them in a villa which the applicant used as a studio in Všenory (the Czech Republic). Eight people were present in the villa; however, a meeting in the bedroom took place between only the applicant, his brother, another Slovenian national and the Netherlands business partner. During the meeting, the Netherlands man was shot dead.

The deceased's bodyguard later told police that, through the open bedroom door, he had seen Mr Šmajgl shoot his boss. Jurisdiction for the case was transferred to Slovenia, because Mr Šmajgl was already serving a prison sentence there for a different offence. He was charged with murder, and was duly convicted by the Novo Mesto District Court on 17 January 2003. At trial, a written statement of the bodyguard had been admitted as evidence; however, he did not attend the hearing. Mr Šmajgl complained of this and appealed his conviction. It was overturned by the Supreme Court on 19 May 2005, on the grounds that he should have been given a chance to cross-examine the bodyguard and other foreign witnesses.

A retrial was arranged. However, the Netherlands bodyguard refused to attend in person, because he feared for his physical safety. An examination of the bodyguard and another witness was therefore scheduled to take place prior to the hearing; though a Netherlands court refused the applicant permission to attend the hearing himself, also on safety grounds. Mr Šmajgl's counsel was however permitted to attend, and asked the witnesses a number of questions. The bodyguard's evidence remained broadly consistent with his earlier statements, and was supported by ballistic and medical reports.

On 12 September 2006 the Novo Mesto District Court again convicted Mr Šmajgl of murder, and sentenced him to 15 years in prison. Appeals by Mr Šmajgl were dismissed by both the Ljubljana Higher Court and the Supreme Court; the latter finding that the bodyguard's evidence had been reliable, credible, consistent, and corroborated by other sources; and that Mr Šmajgl had had a sufficient opportunity to challenge it through the assistance of his counsel. Mr Šmajgl's appeal to the Constitutional Court was dismissed on 6 April 2010.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Šmajgl complained in particular that his conviction had been based to a decisive extent on a statement made by a witness he had not had the opportunity to cross-examine directly.

No violation of Article 6 §§ 1 and 3 (d)

Cevrioğlu v. Turkey (no. 69546/12)

The applicant, Ali Murat Cevrioğlu, is a Turkish national who was born in 1956 and lives in Hatay (Turkey). The case concerned the death of Mr Cevrioğlu's ten-year-old son.

In February 1998 Mr Cevrioğlu's son died together with his friend, as a result of falling into a large water-filled hole in a private construction site in a residential area of the Antakya Municipality.

Shortly after the incident, criminal proceedings were instituted in the Hatay Criminal Court of First Instance against the owner of the construction site and three employees of the Antakaya Municipality. Relying on one of three conflicting expert reports, in April 2000 the court held that the Antakya Municipality and the private owner of the construction site bore responsibility for the accident, and that no responsibility could be attributed to the deceased children. The court found the construction site owner and the director of reconstruction at the Antakya Municipality guilty of causing death by negligence and failing to comply with regulations and orders.

However, the judgment was quashed by the Court of Cassation in July 2001. It found that the case should have been examined under Law no.4616, which provides for the suspension of criminal proceedings in respect of certain offences committed before 23 April 1999. In accordance with this finding, the first instance court suspended the criminal proceedings in August 2001.

Mr Cevrioğlu then entered a claim before the Hataya Civil Court of First Instance against the owner of the construction site, his construction company and the Antakya Municipality. In March 2005 the court found that 85% of the responsibility for the deaths of the children lay with the construction site owner and his company, ordering them to pay Mr Cevrioğlu and his family non-pecuniary and pecuniary damage. However, the court dismissed the claim that the Antakya Municipality was also responsible for the deaths. Mr Cevrioğlu and the other applicants appealed this finding, but the Court of Cassation found that the case against the Municipality should have been dismissed even earlier on procedural grounds, as this part of the claim should have been made in the administrative courts.

Compensation proceedings against the Antakya Municipality were eventually raised by Mr Cevrioğlu before the Hatay Administrative Court in 2009. However, the court held that no fault was attributable to the Municipality, and dismissed the claims. This decision was upheld by the Adana District Administrative Court in November 2011.

Mr Cevrioğlu claimed that he and his family had not yet received any compensation from the construction site owner or his company. He had not commenced enforcement proceedings against the company, on the grounds that the owner had already dissipated its assets.

Mr Cevrioğlu's complaint was examined under in particular Article 2 (right to life) of the Convention. He maintained notably that the state authorities had failed to protect his son's right to life.

Violation of Article 2

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 200 (costs and expenses)

Ürün v. Turkey (no. 36618/06)*

The applicant, Güler Ürün, is a Turkish national who was born in 1986 and lives in Istanbul (Turkey). The case concerned the length and fairness of the compensation proceedings brought by Ms Ürün on account of her allegedly unlawful arrest following a demonstration.

In October 1998 Ms Ürün took part, alongside other pupils, in a demonstration to protest against the shortage of teachers in her school. According to the incident report the police intervened at the scene, seizing the placards and taking down the details of six pupils, including Ms Ürün, before letting them go.

Ms Ürün was subsequently questioned by the public prosecutor, who charged her with participation in an unlawful demonstration. On 1 March 2000 the Youth Court acquitted her. The judgment became final in March 2000, as no appeal had been lodged with the Court of Cassation.

In May 2000 Ms Ürün brought an action in the Eyüp Assize Court claiming compensation for unlawful detention, stating that she had been taken into custody at the police station and had been questioned in breach of the law, without her next-of-kin being informed. Her action was eventually dismissed by the Assize Court in April 2003, on the grounds that she had been taken to the police station for an identity check and had not been placed in police custody or in detention pending trial. The Court of Cassation upheld that judgment on 15 December 2006.

Relying in particular on Article 6 § 1 (right to a fair trial within a reasonable time), Ms Ürün complained that the proceedings before the administrative courts had been unfair and excessively long.

Violation of Article 6 § 1 (lenght of proceedings)

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

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)
George Stafford (tel: + 33 3 90 21 41 71)