



## Judgments of 8 October 2019

The European Court of Human Rights has today notified in writing 29 judgments<sup>1</sup>:

12 Chamber judgments are summarised below; separate press releases have been issued for four other Chamber judgments in the cases of *Szurovecz v. Hungary* (application no. 15428/16), *Korneyeva v. Russia* (no. 72051/17), *Margulev v. Russia* (no. 15449/09), and *Zelikha Magomadova v. Russia* (no. 58724/14),

a separate press release has also been issued for a Committee judgment in the case of *L.P. and Carvalho v. Portugal* (nos. 24845/13 and 49103/15);

the 12 other 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 (\*).*

### Denis and Irvine v. Belgium (applications nos. 62819/17 and 63921/17)\*

The applicants, Jimmy Denis and Derek Irvine, are both being held in compulsory confinement in Belgium. The first applicant is a Belgian national who was born in 1984 and the second is a British national who was born in 1964.

Mr Denis and Mr Irvine complained about the refusal by the Belgian courts to order their release, which they considered to be a requirement under the provisions of the Law of 5 May 2014.

The Law of 5 May 2014, which entered into force in October 2016, provides that compulsory confinement can only be imposed after crimes or serious offences resulting in physical harm or psychological injury to another person. The applicants, who were confined for offences classified as theft (Mr Denis in 2007) and attempted aggravated burglary (Mr Irvine in 2002), applied to the Belgian courts for release on the basis of this law, but were unsuccessful.

They alleged, in particular, that their continued compulsory confinement since the entry into force of the 2014 Law was contrary to Article 5 § 1 (e) (right to liberty and security) and 5 § 4 (right to a speedy decision on the lawfulness of detention) of the European Convention on Human Rights.

**No violation of Article 5 § 1**

**No violation of Article 5 § 4**

### Gauci and Others v. Malta (no. 57752/16)

The applicants are 26 Maltese nationals (one with dual Maltese and American nationality) and two British nationals who were born between 1929 and 1979. They live in San Ġiljan, Mellieħa, Swieqi, Baħar iċ Ċagħaq, Paola, and Sliema (Malta), Kent, Somerset, Plymouth, and Middlesex (the United Kingdom), and Cork (Republic of Ireland).

<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)

The case concerned the applicants' complaint that land they had owned had been expropriated without there being a public interest at stake and that they had not been paid compensation.

The applicants owned stakes in almost 4,000 square metres of land in Għadira Bay. In 1957 the authorities decided to expropriate the land at a time when other plots in the area were being taken for coastal development. In 1992 part of the land was granted to a company under a concession.

The applicants took legal steps over the years to try and recover their land, including constitutional proceedings which began in 2009. In 2015 the Civil Court (First Hall) in its constitutional competence found a breach of their property rights under the Convention and awarded them 20,000 euros in respect of non-pecuniary damage. It did not set an award in respect of pecuniary damage.

The court noted that 58 years after the expropriation the applicants had still not received a deed of transfer or any compensation. The judgment was confirmed on appeal.

The applicants complained about the taking of their land under Article 1 of Protocol No. 1 (protection of property) to the European Convention.

**Violation of Article 1 of Protocol No. 1** – concerning the period after 23 January 1967

**Just satisfaction:** 150,000 euros (EUR) for pecuniary damage and EUR 5,815 for costs and expenses to the applicants jointly

### Grace Gatt v. Malta (no. 46466/16)

The applicant, Grace Gatt, is a Maltese national who was born in 1968 and lives in Naxxar (Malta).

The case concerned disciplinary proceedings against her which had led to her dismissal as a police officer.

Ms Gatt was charged in 2001 and later convicted of fraud and collecting funds for her seriously ill son without prior authorisation and then in 2007 for acting as a private investigator without a licence when she went to Syria to bring back a kidnapped child. In the first set of proceedings she was put on probation, while in the second she was given a one-year suspended prison sentence.

In January 2006, the Commissioner of Police filed disciplinary charges against her for bringing the Maltese Police Force into disrepute and for going abroad, undertaking private work and appearing on a television programme without permission. The Internal Board of the Police examined the charges against her, and found sufficient evidence to prove her guilty. The board's report was passed on to the Public Service Commission, which recommended her dismissal. In December 2006 the Prime Minister approved her dismissal with immediate effect.

She brought constitutional redress proceedings, complaining of a breach of her human rights, in particular under Article 6 (right to a fair trial) of the European Convention with regard to the board which had decided her case, as it was made up of the Police Commissioner's subordinates and could not therefore be impartial. At both first and second instance the courts rejected her claims because she was a police officer and was therefore not covered by the protection of Article 6.

Relying in particular on Article 6 § 1, Ms Gatt complained that the disciplinary proceedings against her had been unfair because the board had been neither independent nor impartial.

**Violation of Article 6 § 1**

**Just satisfaction:** EUR 15,000 (non-pecuniary damage) and EUR 10,000 (costs and expenses)

### Solcan v. Romania (no. 32074/14)

The case concerned the authorities' refusal to allow a person being held in a psychiatric facility to attend her mother's funeral.

The applicant, Luminița Zamfira Solcan, is a Romanian national who was born in 1969 and is currently in a psychiatric facility in Pădureni-Grajdu (Romania). She committed a murder in France in 2005 and, diagnosed with paranoid schizophrenia, has been held since then in psychiatric facilities, first in France and as of 2012 in Romania.

Her mother died in 2013 and she lodged a request with the district court for leave to attend the funeral. The court refused because she posed a danger to the public on account of her mental health. In a final decision the County Court dismissed her appeal on points of law as there were no legal provisions allowing detention in a psychiatric facility to be interrupted.

Relying on Article 8 (right to respect for private and family life), she complained about the refusal to allow her to attend her mother's funeral, also pointing out that the decisions in her case had only been taken after the funeral had actually taken place.

#### **Violation of Article 8**

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

### **Fedulov v. Russia (no. 53068/08)**

The applicant, Igor Fedulov, is a Russian national who was born in 1949 and lives in St Petersburg (Russia).

The case concerned his complaint about the authorities' failure to provide him with the free drugs to which he had been entitled for his cancer care.

Mr Fedulov was diagnosed with cancer in 2007. He was found to be entitled to free medicine, in his case Bicalutamide, which he needed for eight to 12 months.

However, the pharmacy assigned to provide him with the pills free of charge only supplied him once on those terms. On all other occasions it told him it was out of stock of free Bicalutamide but that he could buy it at his own expense. Over the following months he paid 1,400 euros for the treatment.

He complained to the authorities and the courts about the lack of free medicine and sought to have his expenses reimbursed, but in February 2008 the District Court rejected his claim in full. It found that the authorities involved, the St Petersburg Medical Insurance Fund and the St Petersburg Healthcare Committee, had done all that was required of them by law.

In particular, the St Petersburg Medical Insurance Fund had fulfilled its obligation to request funds from the Federal Medical Insurance Fund to pay for free medicines but the Federal fund had rejected the request in 2007 as the federal budget set for that purpose had already been exceeded.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained about the fact that he had not been provided with the free medicine to which he had been entitled by law and that the authorities had failed to reimburse him after he had had to buy the necessary drugs himself.

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

**Just satisfaction:** EUR 1,400 (pecuniary damage), EUR 6,500 (non-pecuniary damage), and EUR 2,277 (costs and expenses)

### **Martynyuk v. Russia (no. 13764/15)**

The applicant, Leonid Martynyuk, is a Russian national who was born in 1978 and currently lives in New York (USA).

The case concerned his complaint about the fairness of proceedings in which he had been charged with an administrative offence.

Mr Martynyuk, a political activist and video blogger, was arrested on suspicion of minor hooliganism late in the evening in August 2014. An hour later a police officer compiled an administrative-offence report, citing another police officer and two eyewitnesses.

The applicant was taken before a judge the next day. The judge heard the applicant and his lawyer, and took testimony from a witness on his behalf. The police officer who compiled the report was also present, however, the judge refused a defence request to help obtain street security camera footage. The applicant was sentenced to 10 days' detention.

On appeal in September 2014, the verdict was upheld in one day of proceedings on the basis of the written testimony and other evidence. The applicant and his lawyer were absent.

Relying in particular on Article 6 § 1 (right to a fair trial), the applicant complained that he had not had a fair hearing.

He also complained that his rights under Article 2 of Protocol No. 7 (right of appeal in criminal matters) had been undermined because the appeal had not had a suspensive effect.

#### Violation of Article 6 § 1

#### Violation of Article 2 of Protocol No. 7

**Just satisfaction:** EUR 2,000 (non-pecuniary damage)

### Nadtoka v. Russia (no. 2) (no. 29097/08)

The applicant, Yelena Nadtoka, is a Russian national who was born in 1957 and lives in Novocherkassk, the Rostov Region (Russia). She is a journalist.

The case concerned court decisions against her for defamation following an interview she had published in a local newspaper alleging corruption in the Novocherkassk mayor's office.

In 2007 the mayor in question brought defamation proceedings against Ms Nadtoka, then editor-in-chief of the *Chastnaya Lovochka*, for an interview she had published with the leader of a Cossack movement. The mayor complained that allegations in the article were untrue and demanded a retraction of certain statements.

The courts, while dismissing claims about certain statements, found that others regarding misappropriation of property and breaches of the rules on selling plots of land, had tarnished the mayor's honour and dignity as a public official. The courts also emphasised that the mayor was a "renowned person in the town".

Relying on Article 10 (freedom of expression), Ms Nadtoka alleged that the courts had failed to carry out the necessary balancing exercise between the mayor's right to reputation and her journalistic freedom to report on matters of public interest.

#### Violation of Article 10

**Just satisfaction:** EUR 3,000 (non-pecuniary damage) and EUR 850 (costs and expenses)

### R.K. v. Russia (no. 30261/17)

The applicant, Mr R.K., is a national of the Democratic Republic of the Congo ("the DRC") who was born in 1990 and, according to the latest information available, is being held in a detention centre for foreigners in the Moscow Region.

The case concerned his complaint that his forced removal to the DRC would put him at risk of ill-treatment, even death.

Mr R.K. arrived in Moscow in 2015 on a student visa. In 2016 he applied for temporary asylum, which both the migration and judicial authorities refused to grant. They found that he had failed to provide evidence that he was involved in any DRC opposition groups and for this reason could fear persecution and/or ill-treatment if returned.

During those proceedings he was arrested in March 2017 for overstaying his visa. A Moscow district court examined his case immediately and found that he had breached migration rules. The court ordered that he be held at a centre for the temporary detention of foreigners until he could be removed to the DRC.

His removal was, however, stayed in April 2017 on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Russian Government that he should not be removed for the duration of the proceedings before it.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr R.K. alleged that he was wanted by the authorities in the DRC for his participation in the protests by the political opposition and he feared persecution and ill treatment if returned to the DRC. He also complained under Article 5 §§ 1 (f) and 4 (right to liberty and security/right to have lawfulness of detention decided speedily by a court) that the proceedings on his detention pending expulsion had been arbitrary and too long and that he had had no access to effective judicial review of his detention.

**No violation of Article 3** – in the event of Mr R.K.’s forced return to the DRC

**Violation of Article 5 §§ 1 (f) and 4**

**Interim measure** (Rule 39 of the Rules of Court) – not to remove Mr R.K. – still in force until judgment becomes final or until further order.

**Just satisfaction:** EUR 5,000 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

### Urazbayev v. Russia (no. 13128/06)\*

The applicant, Mr Mukhamedzhan Urazbayev, is a Russian national who was born in 1964 and is currently being held in a correctional colony in Kurgan.

The case concerned the applicant’s complaint about his conviction. He alleges that it was based on a confession obtained by the police from his brother under torture while his brother was being held in arbitrary detention.

On 6 May 2002 a criminal investigation was opened into the theft of cattle in the Katayskiy district. Mr Urazbayev and his brother were suspected. A police ambush was put in place, in the course of which a police officer was killed.

Between 10 and 12 May 2002 police officers questioned the applicant’s brother, who was placed in administrative detention at that time for using obscene language in a public place. On 12 May 2002 his brother drew up a “sincere confession”, stating that he, and his brother, had stolen cattle and that his brother had admitted to him that he had killed the police officer. The following day, he indicated to a court-appointed lawyer that he wished to withdraw his statements since they had been extracted under torture. He lodged a complaint alleging police violence. On 27 June 2004 Mr Urazbayev, who was on the run, was captured and arrested as a suspect in the unlawful killing of the police officer.

Mr Urazbayev’s criminal trial opened in 2004 before the Kurgan Regional Court. The applicant denied all the accusations and asked that his brother’s statements be excluded from the prosecution evidence since they had been obtained under torture in the course of unlawful detention and in the absence of a lawyer. On 15 June 2005 the Kurgan Regional Court, basing its finding on the “sincere confession” by the applicant’s brother, sentenced him to 22 years’ imprisonment for the unlawful killing of a police officer, the theft of weapons and ammunition and the unlawful possession of

weapons and explosives. The court established that Mr Urazbayev's brother had been at his side when he had fired and that he was the only witness to the murder.

Mr Urazbayev appealed on points of law. The Supreme Court upheld the judgment.

Relying on Article 6 § 1 (right to a fair trial), the applicant complained that his conviction had been based on statements extracted from his brother under torture in the course of arbitrary detention by the police.

#### **Violation of Article 6 § 1**

**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 Urazbayev.

### **Balsamo v. San Marino (nos. 20319/17 and 21414/17)**

The applicants, Valentina Balsamo and Angela Balsamo, are Italian nationals who were born in 1986 and 1985 respectively and live in Brescia (Italy).

The case concerned the confiscation of assets in the framework of money laundering proceedings.

In July 2011 a San Marino investigating judge seized assets worth some 1.9 million euros in a current account and a bond account which had been opened by the first applicant. The basis for the decision was an investigation against both applicants and their father for ongoing money laundering.

In November 2014 the applicants were found guilty of money laundering and the entire frozen amount was confiscated. The court relied on evidence that the father had been tried and convicted in Italy of theft and receiving stolen goods, which had led to proceeds of 750,000 euros.

The San Marino court also concluded that given the father's previous record it could not be excluded that the whole amount seized from the applicants had had a criminal origin. It did not accept their explanation that the funds had come from licit activities such as real estate or the family business.

On appeal, the applicants were acquitted in October 2016 of money laundering owing to their young age and possible lack of knowledge of the criminal origin of the funds. However, the confiscation order was upheld owing to the funds' clearly criminal origin. The applicants applied to the judge for extraordinary remedies for a revision of the appeal judgment, relying on Convention provisions. Their revision request was rejected in May 2017.

The applicants alleged, in particular, that the confiscation had violated their rights under Article 1 of Protocol No. 1 (protection of property).

#### **No violation of Article 1 of Protocol No. 1**

### **Almaši v. Serbia (no. 21388/15)**

The applicant, Šandor Almaši, is a Serbian national who was born in 1979 and lives in Male Pijace (Serbia).

The case concerned his alleged ill-treatment by the police and his complaint of a conviction on the basis of a confession made under duress.

Mr Almaši was sentenced to one year in prison in September 2011 after being found guilty of crossing the border illegally and of people smuggling, along with an accomplice.

During the domestic proceedings the defence alleged that Mr Almaši had been coerced into a confession while in custody after being slapped by a police officer, that witness testimony against him was unreliable, particularly an identification procedure, and that the appointment of a legal-aid

lawyer during his police questioning had been irregular as he was not allowed to appoint his own lawyer. The Constitutional Court rejected his final appeal in March 2015.

The applicant complained under Article 3 (prohibition of inhuman or degrading treatment) that he had been ill-treated by the police and that no proper investigation into his allegations of ill-treatment had taken place. He also complained under Article 6 §§ 1 and 3 (c) of a lack of fairness in the criminal proceedings against him, in particular, that his conviction had been based on the confession he had made in April 2011, itself obtained in breach of his right to legal assistance of his own choosing.

**Violation of Article 3** (investigation)

**No violation of Article 3** (treatment)

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

**Just satisfaction:** EUR 3,000 (non-pecuniary damage) and EUR 3,500 (costs and expenses)

## Milovanović v. Serbia (no. 56065/10)

The applicant, Mirjana Milovanović, is a Serbian national who was born in 1964 and lives in Belgrade.

The case concerned her being unable to obtain custody of her children despite court orders dating from 2003 in her favour.

Ms Milovanović split up from her husband in 2001, taking their children with her. However, in January 2002 the ex-partner forcibly seized the children. From that time until October 2009 the applicant had no regular contact with her children because of deliberate obstruction by her ex-partner which led in turn to the children becoming alienated from her.

She won an interim order for sole custody in February 2003, and for a hand over of the children within 24 hours, and a final judgment for sole custody in October 2005, with a prohibition on contact between the ex-partner and the children for three months to enable them to restore their emotional ties with her. Neither order was ever enforced. Over the years the applicant has had sporadic contact with the children, who eventually stated that they preferred to stay with their father and meet the applicant regularly. In the meantime the children turned 18.

Following an appeal by the applicant in February 2009, the Constitutional Court in May 2012 found a violation of the applicant's right to a fair trial as regards the length of the enforcement proceedings for the final custody judgment of October 2005.

The applicant complained that the Serbian authorities had failed to take the necessary measures to enforce the child custody decisions rendered in her favour, which had led to her being denied contact with her children and being prevented from effectively exercising her custody and parental rights since 2002. The Court dealt with this aspect of the case under Article 8 (right to respect for private and family life).

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), the applicant also complained about the length of the proceedings before the Constitutional Court.

**Violation of Article 6 § 1**

**Violation of Article 8**

**Just satisfaction:** EUR 10,000 (non-pecuniary damage) and EUR 5,300 (costs and expenses)

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