



## Judgments of 14 March 2017

The European Court of Human Rights has today notified in writing 17 judgments<sup>1</sup>:

six Chamber judgments are summarised below; separate press releases have been issued for two other Chamber judgments in the cases of *Ilias and Ahmed v. Hungary* (application no. 47287/15) and *Yevgeniy Zakharov v. Russia* (no. 66610/10);

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 (\*).*

### K.B. and Others v. Croatia (application no. 36216/13)

The application is brought by K.B. on behalf of herself and her two children. All three are Croatian nationals and were born in 1968, 2001, and 2005, respectively. The case concerned access arrangements between K.B. and the children.

The relationship between K.B. and the father of the children broke down. K.B. had custody of the children, whilst the father was given access rights. However, at the end of August 2010, the father disregarded a court order to hand over the children after the summer holidays. They have been living with him ever since. Though K.B. has tried to make contact on multiple occasions, they have repeatedly refused to see her, and she has never since been able to obtain proper access to them.

In the judgment on the couple's divorce in April 2011, the father was given custody of the children, whilst K.B. was granted contact rights on a fortnightly basis. However, these contact rights have never been enforced. K.B.'s access arrangements were varied in August 2012, but that order was also never enforced. In 2015 an expert opinion indicated that the children's estrangement from their mother (and refusal to see her) was the result of their father's negative attitude toward her. It also recommended referring him to psychotherapy, which was subsequently ordered by the court. Proceedings concerning K.B.'s contact rights appear to still be pending before the domestic authorities.

K.B. complained in particular that, by failing to secure regular contact with her sons, which had been necessary to maintain family ties between them, the domestic authorities had violated her rights under Article 8 (right to respect for family life) of the European Convention on Human Rights.

### Violation of Article 8

**Just satisfaction:** 12,500 euros (EUR) (non-pecuniary damage) and EUR 3,780 (costs and expenses)

<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)

## Kavaliauskas and Others v. Lithuania (no. 51752/10)

The applicants, Kristupas Kavaliauskas, Martynas Kavaliauskas, Romas Konstantinas Batūra, and Danutė Butkienė, are Lithuanian nationals who were born in 1972, 1980, 1937 and 1925 respectively and live in Vilnius. The case concerned their complaint about restitution proceedings in respect of a house in Kaunas, nationalised in the 1940s.

In 1991 the first and second applicants' ancestor as well as the third and fourth applicants asked the Lithuanian authorities to restore their property rights to the house. In 1995 the Kaunas City Council decided that their property rights to the house should be restored in equal parts. They were paid partial compensation in 1996. In 2008 they were paid the remaining compensation and a further amount of compensation in 2009. In subsequent proceedings the applicants requested the authorities to calculate the remaining compensation as well as the compensation already paid in accordance with the market price of the house in 2008. The Supreme Administrative Court ultimately found in 2010 that the value of the property had to be assessed in the light of values when the decision to restore property rights had been taken, namely in 1995.

The applicants alleged in particular that the compensation for the house had not been calculated correctly, as it had not been calculated at 2008 values. They were also dissatisfied with the overall length of the restitution process in their case, namely from 1991 to 2009. They relied on Article 1 of Protocol No. 1 (protection of property).

**No violation of Article 1 of Protocol 1** - as regards the amount of the compensation granted

**Violation of Article 1 of Protocol 1** - as regards the overall length of the restitution process

**Just satisfaction:** EUR 6,000 (non-pecuniary damage) and EUR 200 (costs and expenses) to the applicants jointly

## Mukayev v. Russia (no. 22495/08)

The applicant, Arsan Mukayev, is a Russian national who was born in 1977. He is currently serving a life prison sentence for, among other things, murdering 12 people. The case concerned his allegation that he had been tortured by the police and that he had been convicted on the basis of statements he had made under duress.

Extradited from Kazakhstan to Russia on 23 February 2006, Mr Mukayev was immediately taken to a remand prison in Moscow where he was handed over to Chechen investigators and police officers for his transfer to Grozny. He alleges that he was punched, kicked and beaten with rifle butts on the journey from Moscow to Grozny, then, when handed over to the police authorities in Grozny late the same evening, was tortured with electric shocks throughout the night and the following day to pressure him into admitting to a number of serious crimes. He eventually signed a confession on 25 February 2006. He submits that the torture continued over the following days at the police station and that, even when he had been transferred to a remand prison on 6 March 2006, he was sometimes returned to the police station for further beatings and electrocutions so that he would not complain about his ill-treatment and would memorise the crimes he had allegedly committed.

He complained to the prosecuting authorities in March 2006 about the ill-treatment. The investigating authorities took six decisions refusing to open a criminal investigation due to lack of evidence. These decisions were repeatedly set aside by the supervising authorities as unsubstantiated, unlawful or based on an incomplete inquiry.

In June 2007 Mr Mukayev lodged a judicial appeal against the refusal to investigate his allegations. In October 2007 the district court upheld his complaint in full, recognising that he had been subjected to physical violence between February and March 2006 and that the refusal to institute criminal proceedings was unlawful. The court ordered further verifications. However, in March 2008 an investigator again ruled against instituting criminal proceedings against the police officers.

Mr Mukayev thus lodged another judicial appeal, which was subsequently dismissed as unsubstantiated. This decision was then upheld by the Chechnya Supreme Court in August 2008.

In the meantime, in May 2007 Mr Mukayev was found guilty and sentenced to life imprisonment. The trial court based its ruling, among other things, on his confession. The sentence was upheld on appeal by the Supreme Court of the Russian Federation, which also stated that unlawful methods of investigation against Mr Mukayev had not been confirmed.

Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Mukayev alleged that he had been subjected to ill-treatment by the police and that no effective investigation had been carried out into his complaints. Further relying on Article 6 § 1 (right to a fair trial), he made two complaints about the unfairness of the criminal proceedings against him: first, he alleged that his conviction had not been fair as the domestic courts had relied on a confession he had only given under duress; and, second, that he had not been able to defend himself with a lawyer of his choosing, and that this lawyer had not provided him with proper legal assistance.

**Violation of Article 3** (torture)

**Violation of Article 3** (investigation)

**Violation of Article 6 § 1**

**Just satisfaction:** EUR 45,500 (non-pecuniary damage) and EUR 4,500 (costs and expenses)

## Orlov and Others v. Russia (no. 5632/10)

The case concerned the abduction and ill-treatment of a human rights activist and three journalists, in Ingushetia (Russia), during November 2007. The first applicant, Oleg Orlov (born in 1953), was at the relevant time the chairman of Memorial, a Russian human rights NGO. The other three applicants, Artem Vysotskiy (born in 1974), Stanislav Goryachikh (born in 1986), and Karen Sakhinov (born in 1982), were a reporter and camera team for REN TV, a Russian television company. They were in the region to cover a planned protest against the abuse of power by state security services. On the night of 23 November 2007, which was the eve of the public protest, all four applicants were staying in the Hotel Assan in Nazran, Ingushetia. According to multiple witnesses, the security guards and police who were normally present at the hotel were summoned away from the premises, following a call made by a Deputy Minister of the Interior of Ingushetia.

During the night, men dressed in camouflage and armed with automatic weapons burst into hotel rooms that were occupied by the applicants. The applicants were physically assaulted, saw their belongings seized, and had their heads covered in black plastic bags. They were then abducted in a minibus waiting outside. The applicants were driven to a field, where they were beaten and told that they would be shot. Instead, an abductor said that the applicants would be killed if they returned to Ingushetia, before the abductors drove away.

An investigation was opened. The applicants and numerous witnesses gave statements giving an account of the abduction. However, the investigation was repeatedly suspended (before being reopened), on the grounds that the perpetrators could not be identified. The authorities refused to examine the involvement of State officials, despite being urged to do so by the applicants. The investigation was last suspended in May 2011, and is still pending.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicants complained that they had been abducted and subjected to ill-treatment by State agents and that the authorities had failed to investigate effectively. They also complained of the unlawful deprivation of their liberty, under Article 5 (right to liberty), and the seizure of their valuables and equipment, under Article 1 of Protocol No. 1 (protection of property).

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

**Violation of Article 3** (investigation)

**Violation of Article 5****Violation of Article 1 of Protocol No. 1**

**Just satisfaction:** EUR 1,610 to Oleg Orlov, EUR 1,160 to Artem Vysotskiy, and EUR 830 to Karen Sakhinov in respect of pecuniary damage, EUR 19,500 each to Oleg Orlov, Artem Vysotskiy, Stanislav Goryachikh and Karen Sakhinov in respect of non-pecuniary damage, and EUR 2,400 to the applicants jointly in respect of costs and expenses.

**Yeltepe v. Turkey (no. 24087/07)\***

The applicant, Gökhan Yeltepe, is a Turkish national who was born in 1984 and lives in Ankara.

The case concerned proceedings for compensation brought by Mr Yeltepe, who, after carrying out his compulsory military service for 11 months, was declared unfit for military service.

On 25 November 2004 Mr Yeltepe joined the army in order to carry out his compulsory military service, but was demobilised on 1 November 2005 on the basis of a medical report drawn up on the same day concluding that he was unfit for military service, as the doctors had in the meantime discovered that he had had his spleen removed when he was seven or eight years old. He was not notified of the report in question.

On 24 February 2006 Mr Yeltepe lodged a claim with the Ministry of Defence seeking compensation, but received no reply. On 9 May 2006 he lodged an application with the Supreme Military Administrative Court, which, ruling as a bench of three military judges and two career officers, rejected his claim on the grounds that it was not supported by all the necessary documents and in particular the medical report of 1 November 2005. He was given a new time-limit within which to resubmit his claim.

On 27 June 2006 Mr Yeltepe submitted a fresh claim together with, among other documents, the medical report of 1 November 2005 of which he had obtained a copy on 14 June 2006. On 15 November 2006 the High Court, ruling in the same composition, rejected his claim on the grounds that it had been submitted outside the time-limit, which, in its view, was 60 days (section 40 of Law no. 1602 on administrative acts) and that the time-limit had started to run on the date on which the report of 1 November 2005 had been approved and had become final, namely, 30 December 2005. As Mr Yeltepe had lodged his claim on 27 June 2006, he had failed to comply with the time-limit. During the proceedings Principal State Counsel delivered an opinion, which was not communicated to Mr Yeltepe.

On 25 December 2006 Mr Yeltepe sought rectification of the judgment, submitting that the time-limit was one year, according to section 43 of Law no. 1602 on administrative acts, and that he had therefore complied with the time-limit. On 31 January 2007 the High Court, ruling in the same composition, rejected his application. During the proceedings Principal State Counsel delivered an opinion, which was not communicated to Mr Yeltepe. On 8 March 2007 Mr Yeltepe unsuccessfully sought to have the proceedings reopened.

Relying on Article 6 § 1 (right to a fair hearing), Mr Yeltepe alleged in particular that the Supreme Administrative Court lacked independence and impartiality on account of its composition.

**Violation of Article 6 § 1**

**Just satisfaction:** EUR 6,000 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

## Barysheva v. Ukraine (no. 9505/12)

The applicant, Marina Barysheva, is a Ukrainian national who was born in 1982 and lives in Kharkiv (Ukraine). The case concerned her complaint that she had been subjected to police brutality on two occasions in 2009.

Two sets of criminal proceedings for drug dealing were brought against Ms Barysheva in 2009. She alleges that she was ill-treated by the police in the context of both proceedings. On the first occasion, she submits that she was arrested in a café in January 2009, then beaten and threatened at a police station in order to make her confess. She did not seek medical assistance on her release and her complaint about the ill-treatment was subsequently rejected as unsubstantiated by the prosecuting authorities. On the second occasion, she claims that four police officers forced their way into her house on 25 June 2009, that she was hit on the head with the grip of a gun and then taken to a police station where she was threatened and punched and only released on confessing to the drug-related offences. She sought help at a hospital the next day and was diagnosed with concussion and multiple contusions. She reported her injuries soon after and a number of steps were taken over the following weeks/months, notably medical reports were organised, key witnesses questioned and evidence examined. Formal criminal proceedings were instituted within two and a half months, but did not identify those responsible for her injuries or the circumstances in which they had been sustained. A final decision in the case of November 2011 not to reinstate criminal proceedings was notably taken on the basis that her injuries, which had been re-classified as minor, could technically have been self-inflicted.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Ms Barysheva alleged that she had been ill-treated by the police and that her ensuing complaints had not been properly investigated.

### **Violation of Article 3** (treatment)

**Just satisfaction:** EUR 7,500 (non-pecuniary damage)

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### **Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@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)

**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.