



## Judgments of 15 October 2019

The European Court of Human Rights has today notified in writing 19 judgments<sup>1</sup>:

five Chamber judgments are summarised below;

14 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 (\*).*

**Kuzhelev and Others v. Russia** (applications nos. 64098/09, 64891/09, 65418/09, 67406/09, 67697/09, 66035/09, and 1504/10)

The applicants, Viktor Kuzhelev, Yelena Pavlova, Valeriy Smirnov, Galina Kudryashova, Vera Petrova, Natalya Lebedeva, and Valeriy Tomilin, are Russian nationals who were born in 1946, 1953, 1940, 1954, 1947, 1957, and 1946 respectively and live in St Petersburg (Russia).

The case concerned the lack of enforcement of court judgments in their favour on unpaid salary and other work-related payments.

The applicants worked for a shipbuilding and ship repair company in St Petersburg called the Kronstadt Marine Plant, a State Unitary Enterprise ("the FGUP") of the Ministry of Defence. Owing to financial difficulties the company was placed under external administration in March 2005. A decision was subsequently taken to transfer the company's assets to a new company called OAO Kronstadt Marine Plant Awarded the Order of Lenin ("the OAO") within the substitution of assets' procedure, which took place in February 2007. FGUP employees were also transferred to the OAO.

The courts subsequently declared the transfer of the assets and the creation of the new company invalid and the assets went back to the FGUP. The OAO in turn dismissed the applicants in August 2008.

The applicants brought proceedings against both companies for unpaid or delayed salary and to be reinstated by the FGUP. They were wholly or partially successful in those claims and received judgments in their favour. Judgments against the OAO were never enforced while those against the FGUP were enforced with a delay.

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights and Article 1 of Protocol No. 1 (protection of property) to the Convention the applicants complained about the non-enforcement of judgments in their favour against the FGUP for unpaid wages in 2008 and for damages owing to a delay in the payment of severance packages.

They relied on the same provisions to complain about the lack of enforcement of judgments against the OAO on unpaid salaries for June to July 2008, as subsequently index-linked.

<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)

**Violation of Article 6 § 1** – in respect of all applications, on account of the delayed enforcement of the judgments against the FGUP for unpaid wages in 2008

**Violation of Article 1 of Protocol No. 1** – in respect of all applications, on account of the delayed enforcement of the judgments against the FGUP for unpaid wages in 2008

**Violation of Article 6 § 1** –in respect of Mr Kuzhelev, Ms Lebedeva, Ms Petrova, Ms Pavlova, Ms Kudryashova and Mr Tomilin, on account of the non-enforcement of the court orders in the applicant’s favour in respect of salaries for June to July 2008 against the OAO

**Violation of Article 1 of Protocol No. 1** – in respect of Mr Kuzhelev, Ms Lebedeva, Ms Petrova, Ms Pavlova, Ms Kudryashova and Mr Tomilin, on account of the non-enforcement of the court orders in the applicant’s favour in respect of salaries for June to July 2008 against the OAO

**Violation of Article 6 § 1** – in respect of Ms Petrova, Ms Lebedeva and Mr Tomilin, concerning the index-linking proceedings against the OAO

**Violation of Article 1 of Protocol No. 1** – in respect of Ms Petrova, Ms Lebedeva and Mr Tomilin, concerning the index-linking proceedings against the OAO

**Just satisfaction:** For details of the amounts awarded to the applicants in respect of pecuniary damage, see the tables appended to the judgment. The Court further held that Russia was to pay 2,000 euros (EUR) to each applicant for non-pecuniary damage and EUR 21 to Mr Kuzhelev for costs and expenses.

## Just Satisfaction

### Volchkova and Mironov v. Russia (nos. 45668/05 and 2292/06)

The case concerned the question of just satisfaction with regard to the expropriation of a property located in the town of Lyubertsy, near Moscow, in order to allow for a construction project by a private investor.

The applicants, who part-own a house and a plot of land in Lyubertsy, complained, in particular, that they had been deprived of their property to the exclusive advantage of a private investment project devoid of any social purpose, concerning the construction of a multi-storey building. They also submitted that the sum which they had been awarded in compensation had been derisory.

In its [main judgment](#) of 28 March 2017 the Court found that there had been a violation of Article 1 du Protocol No. 1 (protection of property).

The Court held that Russia should pay each applicant 3,000 euros (EUR) in respect of non-pecuniary damage and pay Ms Volchkova EUR 100 in respect of costs and expenses.

Today’s judgment concerned the question of pecuniary damage.

**Just satisfaction:** The Court held that the Russia was to pay 16,700 United States dollars (USD) to Ms Volchkova and USD 42,000 to Mr Mironov for pecuniary damage.

### Lispuchová and Lispuch v. Slovakia (no. 21998/14)

The applicants, Alena Lispuchová and Peter Lispuch, are Slovak nationals who were born in 1965 and 1951 and live in Pezinok and Búca (Slovakia), respectively.

The case concerned their complaint about the quashing of a final and binding judgment in their favour in a private property dispute in response to an extraordinary remedy.

In March 2006 Ms Lispuchová brought an action to have declared void a document in which her former spouse, Mr Lispuch, made a commitment to pay more than three million euros in a private dispute between shareholders. Mr Lispuch later joined the action. In a judgment that became final and binding in February 2011 the courts ruled in the applicants’ favour, finding that the disputed document was an ordinary private-law contract that was void on account of its vagueness.

However, in 2012 at the request of one of the losing defendants the Prosecutor General exercised his discretionary power to challenge the judgments in the applicants' favour and lodged an extraordinary appeal on points of law. The Supreme Court allowed the appeal as it found that the lower courts had erred in their assessment of the legal nature of the document. In particular, it was not a private-law contract but an arbitral award which should have been contested under the Arbitration Act and in enforcement proceedings and not, as in the applicants' case, by an action for a declaratory ruling.

The case was thus remitted to the lower courts for adjudication, which they did in line with the Supreme Court's position, dismissing the applicants' action at first instance in 2014 and then on appeal in 2015. The applicants contested the Supreme Court's decision and the lower courts' further judgments on their case, without success.

The applicants complained that the quashing of the final and binding judgment in their favour had breached their right to legal certainty and equality of arms under Article 6 § 1 (right to a fair hearing).

#### **Violation of Article 6 § 1**

**Just satisfaction:** 331.12 euros (EUR) jointly to Ms Lispuchová and Mr Lispuch for costs and expenses

### **Çapın v. Turkey (no. 44690/09)**

The applicant, Mehmet Atilla Çapın, is a Turkish national who was born in 1958 and lives in New York (USA).

The case concerned his efforts to find out the identity of his biological father.

On 31 October 2003, Mr Çapın initiated a paternity action alleging that a certain İsmail S. was his biological father. Mr Çapın had been placed in an orphanage at the age of four after his mother had married a second time and he had believed that his biological father, his mother's first husband, had died in a road accident. He had found out from relatives in October 2003 that he had actually been born out of wedlock, and that his biological father, İsmail S., was alive and living in Switzerland.

İsmail S. objected to the action for recognition of paternity. He argued that a similar action, lodged by the applicant's mother in 1958, had been dismissed by a binding and final court judgment. He also alleged that the applicant's action was prescribed.

After hearing testimony from the applicant's relatives and examining a petition brought by the alleged father's family after his death in 2005, the first-instance court dismissed the lawsuit as time-barred. The applicant appealed, maintaining that his biological father's existence had not been known to him until 2003 and that his right to know his parentage should not be subjected to time-limits. In 2009 the Court of Cassation dismissed the action, judging that the applicant had not sufficiently justified his delay in bringing the case. The applicant also states that a request to have the paternity proceedings reopened is currently being dealt with by the Ankara Family Court.

Relying in particular on Article 8 (right to respect for private and family life), the applicant complained that the dismissal of his paternity action as time-barred had stopped him from discovering the truth about his biological father's identity.

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

**Just satisfaction:** EUR 5,000 (non-pecuniary damage)

## Mehmet Ali Eser v. Turkey (no. 1399/07)

The applicant, Mehmet Ali Eser, is a Turkish national who was born in 1958 and lives in Istanbul (Turkey).

The case essentially concerned restrictions on his right of access to a lawyer during the preliminary investigation stage of proceedings against him for being a member of an illegal armed organisation.

On 5 August 1997, Mr Eser was arrested on suspicion of being a member of TKP-ML/TIKKO (Communist Party of Turkey/Marxist-Leninist/Turkish Workers and Peasants' Liberation Army), while also in possession of a fake identity card. He was taken to a police station for questioning but remained silent. Over the next seven days, he was initially refused access to legal assistance and alleges that he was tortured by the police. He had three separate medical examinations which were inconclusive. A few days later, a co-accused, Z.Ş., gave a statement which confirmed the applicant's involvement in the criminal organisation.

Mr Eser was ultimately found guilty in 2009 and sentenced to six years and three months' imprisonment. The trial court relied on the arrest report, the fake identity card and Z.Ş.'s statements, noting that Mr Eser had denied the accusations against him throughout the proceedings.

He raised allegations of ill-treatment before the public prosecutor and the investigating judge at the pre-trial stage, and before the trial court during the criminal proceedings, but no action was taken.

Relying in particular on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing) Mr Eser alleged that his statements taken in the absence of a lawyer and under coercion had been used by the trial court to convict him.

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

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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.