



Judgments of 18 October 2016

The European Court of Human Rights has today notified in writing 16 judgments¹:

four Chamber judgments are summarised below; for two others, in the cases of *Vukota-Bojić v. Switzerland* (application no. 61838/10) and *G.U. v. Turkey* (no. 16143/10), 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 ()*.

Miessen v. Belgium (application no. 31517/12)*

The applicant, Mr Vivian Miessen, is a Belgian national who was born in 1969 and lives in Braine-L'Alleud (Belgium). The case concerned the rejection by the *Conseil d'État* of an appeal on points of law lodged by the applicant on the ground that his pleadings in reply had not contained a reply to the other party's arguments.

In 2003 Mr Miessen was assaulted; his attacker was not identified.

In 2007 the Brussels Crown prosecutor informed the applicant that he did not have sufficient evidence to bring a prosecution, but that the judicial investigation was continuing. In 2008 the Brussels public prosecutor's department finally informed him that the case had been discontinued.

Mr Miessen applied for financial assistance from the Commission for Financial Aid to Victims of Intentional Violence and Voluntary Rescuers (hereafter, "the Commission").

The Commission declared Mr Miessen's claim inadmissible, on the ground that the case file on the assault against him had been discontinued from 16 June 2004 and that, given that his request had been submitted more than three years after the decision to discontinue the investigation, the legal deadline for submitting a claim had not been respected.

Mr Miessen appealed to the *Conseil d'État* on a point of law against the Commission's decision. He alleged, in particular, that the reasoning was "practically non-existent" in that it did not address his argument based on the contradictory information provided by the prosecutor's office. In its pleadings in reply, the Belgian State argued that the appeal on points of law was inadmissible on the ground that the applicant had entitled his appeal "application to have set aside", although he was in fact requesting that the Commission's decision be quashed. Mr Miessen replied by repeating the content of his initial application. In a judgment of 1 December 2011, the *Conseil d'État* rejected Mr Miessen's appeal on the ground that his pleadings in reply merely repeated the introductory appeal, without seeking to address the arguments submitted by the other party.

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

Relying on Article 6 (right of access to a court) of the European Convention on Human Rights, the applicant complained that the *Conseil d'État* had displayed excessive formalism in rejecting his appeal on points of law.

Violation of Article 6 § 1

Just satisfaction: 10,000 euros (EUR) for all heads of damage

Ali Aba Talipoğlu v. Turkey (no. 16408/10)*

The applicant, Ali Aba Talipoğlu, is a Turkish national who was born in 1975 and lives in Istanbul (Turkey). The case concerned allegations of ill-treatment sustained by Mr Talipoğlu during an unauthorised demonstration.

Mr Talipoğlu, a lawyer and member of the Association of Contemporary Lawyers (*Çağdaş Hukukçular Derneği*), took part on 16 September 2000 in a demonstration, including the reading of a public statement, to protest against new regulations on body searches of lawyers at the entrance to F-type prisons. As the demonstration had not been authorised, the police asked the crowd to disperse, failing which it would use force. Mr Talipoğlu and 26 other lawyers were placed in police custody, and subsequently brought before the prosecution service, which acquitted them on the same day. Following Mr Talipoğlu's release from police custody, a forensic doctor certified that he was unfit for work for five days, noting several bruises and injuries.

On 18 September 2000 Mr Talipoğlu lodged a complaint against the police officers, accusing them of ill-treatment and abuse of office and alleging that they had beaten him severely and insulted him. On 22 December 2009 the proceedings ended when the Court of Cassation struck the case out of its list as being time-barred. Mr Talipoğlu also made a claim for compensation for unjustified placement in police custody, but his claim was dismissed.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Talipoğlu claimed that he had been subjected to ill-treatment by the police officers.

Violation of Article 3 (treatment and investigation)

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

Alkaşı v. Turkey (no. 21107/07)

The applicant, Ayten Alkaşı, is a Turkish national who was born in 1964 and lives in Istanbul (Turkey). The case concerned Ms Alkaşı's right to respect for her innocence, which had been established during criminal proceedings, but allegedly then ignored during subsequent civil proceedings which concerned the same set of facts.

Ms Alkaşı was a secretary at the Directorate of National Palaces, where she became involved in a conflict with a colleague. At the request of a professor, Ms Alkaşı was demoted.

Ms Alkaşı and a friend, M.G., agreed that M.G. would contact the professor who had requested that Ms Alkaşı be demoted. M.G. went on to make a number of harassing phone calls to him, which included violent threats to his son. Criminal charges were brought against M.G. and Ms Alkaşı in relation to the incident.

At trial, Ms Alkaşı claimed that she had merely asked M.G. to call the professor, because the latter was a mutual friend, and M.G. had offered to facilitate reconciliation between the parties that could lead to Ms Alkaşı's reinstatement. Meanwhile, M.G. claimed that Ms Alkaşı had incited her to make the harassing phone calls and threats. On 27 October 2005, the Istanbul Assize Court convicted M.G., but acquitted Ms Alkaşı due to a lack of corroborating evidence to support the allegations against her.

In the meantime, Ms Alkaşı had been dismissed from her job. In October 2003, she brought a civil claim for wrongful dismissal against the Directorate of National Palaces in the Bakirkoy Labour Court, seeking compensation. On 28 March 2006, the court found as fact that Ms Alkaşı had incited M.G. to threaten the professor. The court dismissed Ms Alkaşı's claim, holding that she had breached her employer's trust and that her dismissal had been justified. Ms Alkaşı appealed, but on 20 December 2006 the Court of Cassation upheld the Labour Court's decision.

Relying in particular on Article 6 § 2 (right to be presumed innocent), Ms Alkaşı complained that the Labour Court's dismissal of her civil claim had amounted to a violation of her right to be presumed innocent, in that the Labour Court had found that she had broken her employer's trust by committing the offence of incitement – even though she had in fact been acquitted of this charge in the criminal proceedings.

Violation of Article 6 § 2

Just satisfaction: The Court dismissed Ms Alkaşı's claims for just satisfaction.

Mızrak and Atay v. Turkey (no. 65146/12)*

The applicants, Hasan Mızrak, Besire Mızrak, Mazlum Mızrak, Deniz Mızrak and Derya Atay, are Turkish nationals who were born in 1958, 1957, 1997, 1985 and 1983 respectively and live in Diyarbakır and Adana (Turkey). They are respectively the father and mother of Mahsum Mızrak, and his brothers and sisters.

The case concerned the death of Mahsum Mızrak in the course of an unauthorised demonstration.

On 30 March 2006 Mahsum Mızrak took part in a demonstration organised following the death of 14 members of the Workers' Party of Kurdistan (PKK), an illegal armed organisation. He was injured on the head by a tear-gas grenade and died as a result of that injury. The Diyarbakır public prosecutor's office opened an investigation to identify those responsible for his death, and brought criminal proceedings for homicide against three police officers. According to the most recent information provided by the parties, the case was still pending before the domestic courts on 10 June 2014.

Mahsum Mızrak's parents also brought an action for damages against the Ministry of the Interior. By a judgment of 5 November 2009, the Diyarbakır Administrative Court awarded them 6,608 euros (EUR) in respect of the material damage sustained and EUR 2,272 in respect of non-pecuniary damage. An appeal was lodged against that judgment, and, according to the information submitted by the parties, it was still pending on 10 June 2014.

Relying in particular on Article 2 (right to life), Mahsum Mızrak's relatives alleged that the police officers had used excessive force, with fatal results for Mr Mızrak, and claimed that the subsequent investigation and criminal proceedings had been ineffective.

Violation of Article 2 (right to life and investigation)

Just satisfaction: EUR 48,000, jointly, to Hasan Mızrak and Besire Mızrak and EUR 5,000, each, to Mazlum Mızrak, Deniz Mızrak, and Derya Atay for non-pecuniary damage and EUR 6,000 jointly to all applicants for costs and expenses

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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)

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.