



## Judgments of 28 March 2017

The European Court of Human Rights has today notified in writing 16 judgments<sup>1</sup>:

ten Chamber judgments are summarised below; separate press releases have been issued for three other Chamber judgments in the cases of *Škorjanec v. Croatia* (application no. 25536/14), *Volchkova and Mironov v. Russia* (nos. 45668/05 and 2292/06), and *Z.A. and Others v. Russia* (nos. 61411/15, 61420/15, 61427/15, and 3028/16);

three 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 (\*).*

### Marunić v. Croatia (application no. 51706/11)

The applicant, Mirela Marunić, is a Croatian national who was born in 1964 and lives in Kostrena (Croatia). She complained that she had been dismissed from her job on account of statements she had made to the media, in breach of her right to freedom of expression.

Between 2003 and October 2007 Ms Marunić was the director of a municipal utility company, KD Kostrena, which was owned by the Municipality of Kostrena. In September 2007 an article was published in the daily *Novi list*, containing public criticisms about how Ms Marunić had performed her job which had been made by the mayor of Kostrena Municipality, Mr M.U.. Eight days later, Ms Marunić responded to the criticisms in another article in *Novi list*. She complained that problems with the company's performance had been caused by the legal department of the municipality, which had allegedly been requiring the utility company to act unlawfully. She called for the company to be audited. Ms Marunić was then summarily dismissed by a decision of the company's general meeting (which was chaired by Mr M.U.), on the grounds that her public statements had been damaging to the company's reputation. Ms Marunić brought a civil action for wrongful dismissal. Though she was successful at first instance and on appeal, the Supreme Court dismissed the action, finding that her dismissal had been justified by her public statements. Her complaint to the Constitutional Court was also rejected.

Ms Marunić complained that her statements to the media had only been made with a view to denying the false accusations against her, and that her dismissal had been in breach of Article 10 (freedom of expression) of the European Convention on Human Rights.

### Violation of Article 10

**Just satisfaction:** 1,500 euros (EUR) (non-pecuniary damage)

<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)

### Sturua v. Georgia (no. 45729/05)

The applicant, Mitrophane Sturua, is a Georgian national who was born in 1953 and lives in Tbilisi. In 1999 he was appointed President of the Abasha District Court for a ten-year term. However, in 2004 disciplinary proceedings were initiated against him and he was removed from office by a Panel of the Disciplinary Council of Judges. Mr Sturua appealed the decision to the Disciplinary Council of Judges and then to the Supreme Court. Both bodies dismissed the appeal and upheld the original decision.

Mr Sturua complained that the disciplinary proceedings against him were unfair, in violation of Article 6 § 1 (right to a fair hearing). In particular, he complained that the Disciplinary Council of Judges that heard his appeal had not been impartial, because four of the eight judges hearing the appeal had already ruled on his case as the Panel of The Disciplinary Council which had originally decided to remove him from office.

#### Violation of Article 6 § 1 (impartial tribunal)

**Just satisfaction:** EUR 3,500 (non-pecuniary damage) and EUR 3,380 (costs and expenses)

### Savotchko v. the Republic of Moldova (no. 33074/04)\*

The applicant, Olga Savotchko, is a Russian national who was born in 1952 and lives in Chişinău. The case concerned the disclosure, in the context of a dispute between Ms Savotchko and her mother, of the applicant's monthly telephone records.

An inheritance dispute between Ms Savotchko and her mother was brought before the civil courts. In the course of the proceedings Ms Savotchko's mother submitted the applicant's monthly telephone records, which had been communicated to her by the company M – the national operator of fixed-line telephones, whose sole shareholder was the State – at her lawyer's request. These records included, among other information, data about the numbers dialled and the date, time, duration and cost of the calls made by Ms Savotchko. The court relied on these telephone records in dismissing, in part, a claim by Ms Savotchko for exoneration from court tax.

On 22 August 2002 Ms Savotchko brought an action against the company M, seeking compensation for the non-pecuniary damage sustained as a result of disclosure of these documents, alleging that there had been an interference with her private life. The Buiucani first-instance court refused to grant her claim in a judgment of 2 April 2003. She lodged an appeal against that judgment, but it was dismissed by the Chişinău appeal court as ill-founded. Ms Savotchko then appealed on points of law, arguing that the disclosure of her telephone records had been in breach of the legislation guaranteeing the secrecy of telephone conversations and of the Access to Information Act, but the Supreme Court of Justice dismissed that appeal on 21 January 2004, upholding the previous judgments and finding that the lawyer acting for Ms Savotchko's mother had been authorised to request the information in question.

Relying in particular on Article 8 (right to respect for private and family life), Ms Savotchko alleged that the disclosure of her telephone records had infringed her right to respect for her private life and correspondence.

#### Violation of Article 8

**Just satisfaction:** EUR 3,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

### Şolari v. the Republic of Moldova (no. 42878/05)\*

The applicant, Eugen Şolari, is a Moldovan national who was born in 1983 and lives in Chişinău. The case concerned the imposition of an administrative penalty on Mr Şolari for failure to comply with the regulations governing the organisation of public gatherings.

By a decision of 25 April 2005, the Chişinău City Hall authorised the association “Proiect Nou-Bugeac” to organise a demonstration in the city centre on 1 May 2005, subject to the condition that it took place in a given location and that the demonstrators did not carry any symbols of parties, political organisations or associations that were not registered in the Republic of Moldova. Mr Şolari took part in this demonstration, during which the participants chanted, among other things, slogans in support of workers and anti-government and anti-capitalist slogans. Some carried symbols harking back to the symbols of the Soviet Union, in particular the hammer and sickle.

On 4 May 2005 the police drew up an official report, recording an administrative offence against Mr Şolari for failure to comply with the regulations on the organisation of public gatherings, noting that the gathering had not begun at the location indicated by the city hall, that the participants had waved placards and slogans in support of unregistered parties and movements – “the Bolshevik National Party” and “popular resistance” – and that they had been carrying unregistered symbols. On the same date, the Buiucani first-instance court convicted Mr Şolari of the offences and ordered him to pay a fine of about 28 euros (EUR). The applicant lodged an appeal against that decision, but this was dismissed by the Chişinău Court of Appeal. Furthermore, on 14 November 2005 the Buiucani court, noting that the fine had not been paid, converted this penalty into 30 days’ administrative detention. Mr Şolari challenged that decision and paid the fine. On 7 December 2005 the Chişinău Court of Appeal ordered his immediate release.

Relying in particular on Article 11 (right to freedom of assembly), Mr Şolari complained about the fact that he had been given an administrative fine for participating in the demonstration of 1 May 2005.

#### **Violation of Article 11**

**Just satisfaction:** EUR 28 (pecuniary damage), EUR 4,000 (non-pecuniary damage), and EUR 1,560 (costs and expenses)

### **Fernandes de Oliveira v. Portugal (no. 78103/14)**

The applicant, Maria da Glória Fernandes de Oliveira, is a Portuguese national who was born in 1937 and lives in Ceira (Portugal). She complained that her son had committed suicide as a result of a psychiatric hospital’s negligence in supervising him. The applicant’s son suffered from mental disorders, and was repeatedly admitted to Sobral Cid Psychiatric Hospital in Coimbra. In April 2000 he was admitted to the same institution, because he had attempted to commit suicide. On 27 April 2000 he left the premises without notifying the hospital authorities, and committed suicide by jumping in front of a train. Ms Fernandes de Oliveira lodged a civil action for damages against the hospital, claiming that her son should have been under medical supervision and that the hospital staff should have prevented him from leaving the premises. Her claim was dismissed by the Coimbra Administrative Court, as was her appeal to the Administrative Supreme Court, on the grounds that the suicide had not been foreseeable and the hospital had not breached any duty of care.

Ms Fernandes de Oliveira complained that the authorities had failed to protect the life of her son and had been responsible for his death, in violation of his rights under Article 2 (right to life).

#### **Violation of Article 2 (right to life)**

#### **Violation of Article 2 (investigation)**

**Just satisfaction:** EUR 703.80 (pecuniary damage), EUR 25,000 (non-pecuniary damage) and EUR 409 (costs and expenses)

## Revision

Alexandrescu and Others v. Romania (nos. 56842/08, 56844/08, 56849/08, 56860/08, 696/09, 704/09, 724/09 and 11022/09)

The applicants, Carmen Doroteia Alexandrescu, Ion Băroiu, Iosif Bălaș-Salcoci, Ștefan Boran, Vladimir Ciobanu, Marin Dincă, Cristian Pațurcă, and Laura Veronica Stoica, are Romanian nationals who were born in 1950, 1958, 1939, 1957, 1948, 1938, 1964, and 1943 respectively and live(d) in Bucharest. Cristian Pațurcă died on 19 January 2011 and Laura Veronica Stoica died on 20 August 2014.

The case concerned a request for revision by the Romanian Government of a judgment of the European Court of Human Rights of 24 November 2015, relating to the applicants' complaints about the criminal proceedings with regard to the military authorities' violent crackdowns on demonstrations in Bucharest.

Between 21 and 23 December 1989 the applicants took part in the anti-communist demonstrations in Bucharest which led to the fall of the communist regime. In 1990 the military prosecutor's office opened a criminal investigation in relation to the violent crackdown on these demonstrations. The applicants were interviewed at the military prosecutor's office as witnesses in connection with the military's use of violence against civilians. The applicants lodged criminal complaints and joined the criminal proceedings as civil parties. The criminal investigation is apparently still pending before the domestic authorities.

Between 13 and 15 June 1990 another violent crackdown took place against demonstrators, including the applicants, in Bucharest protesting against the newly installed government. Armed intervention by the military forces, joined by thousands of miners who had been transported to Bucharest, resulted in more than a thousand civilian casualties, of whom a hundred were killed. Criminal investigations into the crimes committed during the violent repression of the demonstrations were opened in 1990 and the applicants were joined to the criminal proceedings as civil parties. A decision not to bring a prosecution was adopted on 17 June 2009 and an appeal was dismissed on 3 September 2009 by the head prosecutor. These decisions have since been upheld by the High Court of Cassation and Justice.

In its [judgment of 24 November 2015](#) the Court held that there had been a violation of Article 6 § 1 (right to a fair trial within a reasonable time) of the Convention on account of the length of the criminal proceedings concerning the events of December 1989, which the applicants had joined as civil parties. The Court awarded 2,400 euros (EUR) to each applicant for non-pecuniary damage.

The Government had now requested revision of the judgment of 24 November 2015, which they had been unable to execute because Cristian Pațurcă and Laura Veronica Stoica had died before the judgment was adopted.

**The Court decided to revise its judgment of 24 November 2015 insofar as it concerned applications nos. 724/09 and no. 11022/09 and to strike these applications out of its list.**

Magomedov and Others v. Russia (nos. 33636/09, 34493/09, 35940/09, 36054/09, 37441/09, 38237/09, 45415/09, 50333/09, 28480/13, and 28506/13)\*

The applicants are 13 Russian nationals who took part in the emergency operations on the site of the Chernobyl nuclear power plant disaster. They live in various regions of the Russian Federation. The case concerned the setting aside of final judgments delivered in favour of the applicants following the acceptance of appeals that had been lodged out of time by the State authorities against those judgments.

On various dates the applicants took judicial action against the national authorities, challenging the inadequacy of the assorted allowances and additional benefits to which they were entitled in their capacity as participants in the emergency operations on the site of the Chernobyl nuclear power plant disaster. They all won their cases at first instance. As the national authorities had not appealed within the statutory deadlines, the judgments became final and their execution began.

The authorities subsequently lodged late appeals, accompanied by applications for leave to appeal out of time under Article 112 of the Code of Civil Procedure. These applications were granted by the domestic courts and the out-of-time appeals were accepted. On appeal, the previous judgments were set aside. The applicants were not required to reimburse the amounts received in application of the first-instance judgments before these were set aside. Some applicants reimbursed overpayments corresponding to the period after the date on which the relevant judgments were set aside.

Relying in particular on Article 6 (right to a fair hearing), the applicants complained of the unlawful acceptance of the appeals submitted out of time by the various State entities, which had resulted in the setting aside of final judgments in their favour.

**Violation of Article 6 § 1** – concerning applications nos. 33636/09, 34493/09, 35940/09, 37441/09, 38237/09, 28480/13 et 28506/13

The Court further declared applications nos. 36054/09, 45415/09 and 50333/09 **inadmissible**.

**Just satisfaction:** The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

### **Shestopalov v. Russia (no. 46248/07)**

The applicant, Anton Shestopalov, is a Russian national who was born in 1986 and lives in Nizhniy Novgorod (Russia). He complained that in 2004, when he was still a minor, police officers had subjected him to various acts of violence in a police station. These included tying him up, punching him, kicking him and throttling him with a baton. He alleges that fears of further violence led him to sign a self-incriminating statement at the request of the officers, relating to their investigation into the rape of a girl he knew. However, the rape victim gave a statement saying that Mr Shestopalov was not the perpetrator, and no criminal proceedings were ever brought against him. The authorities eventually started criminal proceedings relating to the ill-treatment of Mr Shestopalov in the police station (after refusing to initiate them on six occasions). However, these were suspended on the grounds that the police officers responsible for the violence could not be identified. Mr Shestopalov brought a civil claim against the state for damages. His claim was successful, and he was awarded 50,000 Russian roubles (around 1,450 euros) as compensation.

Mr Shestopalov complained that he had been subjected to torture by police officers; that the authorities had failed to carry out an effective investigation; that the amount of compensation he had been granted had been disproportionate to the suffering he had endured; and that the domestic remedies available to him had not been effective. He relied on Article 3 (prohibition of torture and inhuman or degrading treatment), alone and in conjunction with Article 13 (right to an effective remedy).

**Violation of Article 3** (torture)

**Violation of Article 3** (investigation)

**No violation of Article 13 in conjunction with Article 3** – regarding the civil proceedings

**Just satisfaction:** EUR 48,550 (non-pecuniary damage) and EUR 3,000 (costs and expenses)

## Kemal Coşkun v. Turkey (no. 45028/07)

The applicant, Kemal Coşkun, is a Turkish national who was born in 1964 and lives in Antalya (Turkey). He complained of his dismissal from the police force and the related legal proceedings, which he alleged had been unfair. In July 2004 police found Mr Coşkun and a woman in a car, in an isolated part of the city of Samsun. The woman complained that Mr Coşkun had kidnapped her, beaten her, and threatened to sexually assault her. Both disciplinary proceedings and criminal proceedings were initiated against him. In the disciplinary proceedings, the Supreme Disciplinary Council found it established that Mr Coşkun had committed the offences of attempted rape, assault and threatening violence with a weapon, and ordered his dismissal from the police force. This decision was upheld by the Samsun Administrative Court. However, in the criminal proceedings Mr Coşkun was then acquitted of imprisonment, robbery and attempted rape. Though he was convicted of assault and battery, he was later acquitted of these charges on appeal. In the disciplinary proceedings, Mr Coşkun appealed the decision of the Samsun Administrative Court to uphold his dismissal, arguing that he had been acquitted of all the criminal charges which would have justified his removal from the police. However, his appeal was rejected, as were further legal challenges to his dismissal.

Relying on Article 6 § 2 (presumption of innocence), Mr Coşkun complained that the disciplinary and judicial authorities had violated his right to be presumed innocent, by concluding that he had been guilty prior to his criminal trial, and by enforcing his dismissal on these grounds even after he had been acquitted.

### Violation of Article 6 § 2

**Just satisfaction:** EUR 2,500 (non-pecuniary damage) and EUR 169 (costs and expenses)

## Grigoryan and Sergeyeva v. Ukraine (no. 63409/11)

The applicants, Roman Grigoryan, an Azerbaijani national, and Larisa Sergeyeva, a Ukrainian national, were born in 1981 and 1975 respectively and live in Kyiv. They complained that they had been detained and ill-treated by police, for reasons arising out of ethnic prejudice.

On the night of 6 April 2010 the applicants were arrested for disorderly behaviour and taken to a police station. Mr Grigoryan claims that three officers entered his cell, shouted insults referring to his Armenian origin, threw him to the ground, tied him up, kicked him and throttled him. Ms Sergeyeva complains that she became distressed by the sound of Mr Grigoryan being beaten, and damaged part of her cell. She alleges that officers then tied her up, hit her, spat at her, called her an “Armenian whore” and threatened to rape her. Later that morning, a senior district police official ruled on their case, and imposed fines on the applicants. The applicants lodged a criminal complaint concerning their detention and alleged ill-treatment, but the prosecutor’s office repeatedly refused to institute proceedings against the police officers present at the time.

The applicants complained in particular that they had been ill-treated for reasons arising out of ethnic prejudice and that there had been a failure to effectively investigate their allegations. They relied in particular on Article 3 (prohibition of ill-treatment), alone and in conjunction with Article 14 (prohibition of discrimination).

**Violation of Article 3** (investigation) – in respect of Mr Grigoryan

**Violation of Article 3** (inhuman and degrading treatment) – in respect of Mr Grigoryan

**Violation of Article 14 taken in conjunction with Article 3** – in respect of Mr Grigoryan

The Court further decided to **strike** the application **out of its list** insofar as it concerned Ms Sergeyeva.

**Just satisfaction:** EUR 10,000 (non-pecuniary damage) to Mr Grigoryan

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