



Judgments of 30 January 2018

The European Court of Human Rights has today notified in writing 19 judgments¹:

12 Chamber judgments are summarised below; separate press releases have been issued for two other Chamber judgments in the cases of *Sekmadienis Ltd. v. Lithuania* (application no. 69317/14) and *Enver Şahin v. Turkey* (no. 23065/12);

five 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 ().*

Edina Tóth v. Hungary (application no. 51323/14)

The applicant, Edina Tóth, is a Hungarian national who was born in 1975 and lives in Csobánka (Hungary).

The case concerned the abduction of her two-year-old son by her husband in 2004. She did not see her son again until he was 11 years old. He was at last located in 2014 following the apprehension of her, by that time, ex-husband in Budapest.

In the intervening years, she had been granted a divorce and was awarded custody of her son. However, the decision was not enforced, despite her bringing a number of proceedings both at the domestic and international level, essentially because her ex-husband's whereabouts were unknown.

Relying on Article 8 (right to respect for family life) of the European Convention on Human Rights, Ms Tóth alleged a disruption to her family life because the Hungarian authorities had failed to assist her in being reunited with her son.

Violation of Article 8

Just satisfaction: 12,500 euros (EUR) (non-pecuniary damage) and EUR 3,800 (costs and expenses)

Etute v. Luxembourg (no. 2) (no. 18233/16)*

The applicant, Joseph Etute, is a Nigerian national who was born in 1970 and is currently detained in Schressig Prison in Luxembourg. The applicant alleged that he had been unable to appeal against a decision revoking his release on licence.

In November 2010 Mr Etute was sentenced to thirty months' imprisonment for a drugs offence. On 22 February 2013 he was granted release on licence with effect from 4 March 2013. On 29 October 2015 the investigating judge ordered the applicant's detention in connection with a further drugs offence. On 4 November 2015 the Attorney-General's representative revoked the applicant's release on licence on the grounds that he no longer complied with the conditions that had been imposed on him.

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 5 § 4 (right to a speedy review of the lawfulness of detention) of the European Convention, the applicant complained that he had been unable to appeal against the decision revoking his release on licence.

Violation of Article 5 § 4

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 Etute.

Cassar v. Malta (no. 50570/13)

The applicants, Albert Cassar and Mariella Cassar, are two Maltese nationals who were born in 1945 and 1951 respectively and live in Sliema (Malta).

The case concerned their complaint about not being able to live in a house they owned because there was a tenant there whom the law did not allow them to evict and that the amount of controlled rent they received was too low.

The Cassars bought the property in 1988, when it was already under the controlled rent laws. It has 14 rooms and four double bedrooms and was inhabited at the time of purchase by an elderly couple under a lease. The applicants expected to move in after the couple's death, but in 2003 the couple's daughter, by then in her late 60s, took up the tenancy and has lived in the house since, paying 466 euros a year in rent. The applicants took rented accommodation elsewhere. They argued that a realistic rental value for their property would be several thousand euros a month. Their complaints about the tenancy of their house and the level of rent were rejected in domestic proceedings.

The applicants relied on Article 1 of Protocol No. 1 (protection of property), complaining that they had suffered an excessive individual burden. They also complained under Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1.

Violation of Article 1 of Protocol No. 1

Violation of Article 14 in conjunction with Article 1 of Protocol No. 1

Just satisfaction: EUR 170,000 (pecuniary damage), EUR 3,000 (non-pecuniary damage), and EUR 10,000 (costs and expenses) to the applicants jointly

Pavlovici v. the Republic of Moldova (no. 5711/03)*

The applicant, Vladimir Pavlovici, is a Moldovan national who was born in 1951 and lives in Chişinău. The case concerned the failure to enforce a final judgment in his favour.

In 1940 the Soviet authorities deported the applicant's grandparents and in 1946 nationalised the buildings belonging to them. Mr Pavlovici's grandfather was rehabilitated posthumously in 1989. In March 1996 the applicant's father, in his capacity as legal successor, applied to the courts for restitution of the properties. Mr Pavlovici continued with the proceedings following his father's death.

On 18 June 2002 a final judgment was given ordering the restitution of the properties to the applicant. However, the Supreme Court of Justice allowed an appeal by the Prosecutor General and remitted the case to the first-instance court. On 24 December 2004 the court found in Mr Pavlovici's favour. That judgment remains unenforced to date.

Relying on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), the applicant alleged in particular that the failure to enforce the final judgment in his favour had infringed his right of access to a court and his right to the peaceful enjoyment of his possessions.

Violation of Article 6 § 1 (right of access to a court)
Violation of Article 1 of Protocol No. 1

Just satisfaction: The Court held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision and reserved it for examination at a later date.

Brajović and Others v. Montenegro (no. 52529/12)

The applicants are six Montenegrin nationals who were injured parties in criminal proceedings where the defendant was found guilty.

The case concerned their complaint that the appeal they had brought in 2009 about the legal costs in those criminal proceedings had never been ruled on.

Relying on Article 6 § 1 (access to court), they alleged in particular that the Court of Appeal's failure to rule on their appeal amounted to a denial of access to court.

The applicants are Pava Brajović, Zoranka Ajković, Jelena Brajović, Kastro Brajović, Lindita Vučić, and Nada Zlatičanin. They were born in 1931, 1972, 1948, 1965, 1970, and 1964 respectively, and live in Golubovci (Montenegro).

Violation of Article 6

Just satisfaction: The applicants did not submit a claim for just satisfaction.

Barabanov v. Russia (nos. 4966/13 and 5550/15)
Polikhovich v. Russia (nos. 62630/13 and 5562/15)
Stepan Zimin v. Russia (nos. 63686/13 and 60894/14)

All three cases related to detention and prosecution after a protest on 6 May 2012 in Moscow against allegedly rigged presidential elections. After a peaceful march, a meeting began at Bolotnaya Square, where clashes broke out between the demonstrators and the police.

The applicant in the first case, Andrey Barabanov, is a Russian national who was born in 1990 and lives in Moscow. Mr Barabanov was arrested on 28 May 2012 on suspicion of taking part in acts of mass disorder and committing acts of violence against the police after taking part in the protest. He was held in pre-trial detention until his conviction in February 2014. He was sentenced to three years and seven months in prison, a judgment that was upheld on appeal in June of the same year.

The applicant in the second case, Aleksey Polikhovich, is a Russian national who was born in 1990 and lived in Moscow until his arrest. Mr Polikhovich, who was present at Bolotnaya Square, was arrested in July 2012. He was detained until February 2014, when he was found guilty of taking part in acts of mass disorder and assault on a police officer. He was sentenced to three years and six months in prison. The verdict was upheld on appeal in June of the same year.

The applicant in the third case, Stepan Zimin, is a Russian national who was born in 1992 and lives in Uzlovaya, Tula region (Russia). He was arrested on 8 June 2012 for taking part in acts of mass disorder and using violence against the police at Bolotnaya Square. He was held in detention until his conviction on 21 February 2014, when he was sentenced to three years and six months in jail. He appealed unsuccessfully in June 2014.

Relying on Article 3 (prohibition of inhuman or degrading treatment), all three applicants complained about being held in glass cabins and metal cages during their trial and the appeal. Mr Polikhovich and Mr Zimin also complained under Article 3 about the conditions of their detention.

In addition, they made a number of other complaints under in particular Article 5 (right to liberty and security), Article 6 (right to a fair trial) and Article 11 (freedom of assembly and association).

- case of **Barabanov**:

Violation of Article 5 § 3

Violation of Article 5 § 4

Violation of Article 11

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

- case of **Polikhovich**:

Violation of Article 3 (inhuman and degrading treatment) – in respect of the conditions of transfer to and from court

Violation of Article 3 – on account of the confinement in a glass cabin in hearing room no. 338 at the Moscow City Court

No violation of Article 3 – on account of the confinement in a glass cabin in hearing room no. 635 at the Moscow City Court

Violation of Article 5 § 3

Violation of Article 11

Just satisfaction: EUR 12,500 (non-pecuniary damage) and EUR 300 (costs and expenses)

- case of **Stepan Zimin**:

Violation of Article 3 (inhuman and degrading treatment) – in respect of the conditions of transfer to and from court

Violation of Article 3 – on account of the confinement in a glass cabin in hearing room no. 338 at the Moscow City Court

No violation of Article 3 – on account of the confinement in a glass cabin in hearing room no. 635 at the Moscow City Court

Violation of Article 5 § 3

Violation of Article 11

Just satisfaction: EUR 12,500 (non-pecuniary damage)

Revision

Silášová and Others v. Slovakia (no. 36140/10)

The case concerned a request for the revision of a judgment of the European Court of Human Rights with regard to a complaint by 20 Slovak nationals about the limited rent they were entitled to for the compulsory letting of their land.

The applicants argued in particular that the rent which they had been entitled to obtain under the Allotment Act as in force until 31 March 2011 had been disproportionately low and had been determined with blatant disregard to the land's actual value. After that date, an amendment had entered into force which had adjusted the rent payable to a level commensurate with the market rent.

In a [judgment](#) delivered on 28 June 2016, the Court held that there had been a violation of Article 1 of Protocol No. 1 (protection of property) and awarded EUR 67,030 in total in respect of pecuniary damage, EUR 200 to each of the applicants in respect of non-pecuniary damage, and EUR 2,000 to the applicants jointly in respect of costs and expenses.

On 3 April 2017 the Government informed the Court that one of the applicants (Ms Jolana Dorčíková) had died in 2013, before the judgment had been adopted, and requested a revision of the judgment of 28 June 2016 under the Court's Rules.

In its judgment today the Court **decided to revise** its judgment of 28 June 2016 and to strike the application out of its list of cases in so far as it concerned Ms Jolana Dorčíková. It awarded EUR 66,450 in total in respect of pecuniary damage (for further details concerning each applicant's award, please see the full text of the judgment), EUR 200 to each of the remaining applicants in respect of non-pecuniary damage, and EUR 2,000 to the remaining applicants jointly in respect of costs and expenses.

Boyets v. Ukraine (no. 20963/08)

The applicant, Tatyana Boyets, is a Ukrainian national who was born in 1955 and lives in Kharkiv (Ukraine).

In her case before the Court, Ms Boyets complained in particular about the fact that she had been unable to examine a prosecution witness in court during her bribery trial.

Ms Boyets, who worked in a passport office, was charged with incitement to bribery and fraud in February 2004. She was found guilty and fined in February 2006, a verdict that was upheld on appeal. During the domestic proceedings she complained in particular that she had not been able to examine the woman who had made the bribery allegation and who had cooperated with the police.

Ms Boyets complained in particular under Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses).

Violation of Article 6 §§ 1 and 3 (d)

Just satisfaction: EUR 2,500 (non-pecuniary damage)

Korniychuk v. Ukraine (no. 10042/11)

The applicant, Yevgen Korniychuk, is a Ukrainian national who was born in 1966 and lives in Kyiv.

The case concerned his complaint about his arrest and ensuing detention for 54 days during an investigation into abuse of office.

In February 2009 Mr Korniychuk, Deputy Minister of Justice at the time, sent a letter to Naftogaz Ukrainy, a State-owned gas company, telling it that it could extend a contract with a law firm without a bidding procedure. The prosecuting authorities later found that he had bypassed the Ministry of Justice in signing the letter and that the extension of the contract had caused considerable losses to the State budget.

Mr Korniychuk was charged with exceeding his powers leading to serious consequences. He was arrested on 22 December 2010 and then held in temporary detention from 24 to 30 December. After this, he was placed in pre-trial detention on the grounds that he might abscond or interfere with witnesses. All his appeals against his arrest and detention were dismissed until 15 February 2011, when the investigator released him under an obligation not to abscond. He was amnestied in December 2011.

Mr Korniychuk made a number of complaints under, in particular, Article 5 §§ 1 and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial). He alleged in particular that his arrest – without a judicial warrant – and subsequent detention had been unlawful and arbitrary and that his pre-trial detention from 30 December 2010 to 15 February 2011 had not been sufficiently justified.

Violation of Article 5 § 1 – on account of Mr Korniychuk’s deprivation of liberty without a judicial warrant from 22 to 24 December 2010

Violation of Article 5 § 1 – on account of Mr Korniychuk’s temporary detention from 24 to 30 December 2010

Violation of Article 5 § 3

Just satisfaction: EUR 6,500 (non-pecuniary damage)

Makarenko v. Ukraine (no. 622/11)

The applicant, Anatoliy Makarenko, is a Ukrainian national who was born in 1964 and lives in Kyiv.

The case concerned Mr Makarenko’s complaint about his detention during an investigation into neglect of duty while he had been head of the customs service.

In February 2009 Mr Makarenko signed an order for the customs clearance of 11 billion cubic metres of gas, which an international arbitration panel later found had been taken in breach of contract from a Russian-Ukrainian gas transport company.

Mr Makarenko was charged with neglect of duty leading to serious consequences for signing the order. He was held in detention from June 2010 until July 2011, when the Court of Appeal freed him under an obligation not to abscond. He was found guilty of the charges in July 2012 and was given a suspended sentence of four years’ imprisonment. He was cleared of criminal responsibility in 2014.

He complained under in particular Article 5 §§ 1 (c) and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial).

Violation of Article 5 § 1 – on account of Mr Makarenko’s deprivation of liberty from 3.43 p.m. to 7.02 p.m. on 23 June 2010

Violation of Article 5 § 1 – on account of Mr Makarenko’s arrest without a judicial warrant from 7.02 p.m. on 23 June to 24 June 2010

Violation of Article 5 § 3

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court’s press releases, please subscribe here: [@ECHR_Press](http://www.echr.coe.int/RSS/en).

Press contacts

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)

Patrick Lannin (tel: + 33 3 90 21 44 18)

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.