EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 267 (2016)
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# Judgments of 30 August 2016

The European Court of Human Rights has today notified in writing 11 judgments[1]:

ten Chamber judgments are listed below; for one other, in the case of *Aydoğdu v. Turkey* (application no. 40448/06), a separate press release has been issued.

*The judgments in French below are indicated with an asterisk (*).*

## Mindek v. Croatia (application no. 6169/13)

The applicant, Anton Mindek, is a Croatian national who was born in 1932 and lives in Domitrovec (Croatia). The case concerned his complaint about the forced sale of his house in order to pay a debt.

Between 2003 and 2007, Mr Mindek lost both criminal and civil proceedings brought against him for defamation of his neighbour following the publication of two articles in a daily newspaper in which he accused his neighbour of stealing his house and orchard. As a result, he was ordered to pay damages and costs to his neighbour, amounting in total to 58,415.75 Croatian kunas (approximately 7,924.87 euros).

Mr Mindek did not pay the sums on time. Accordingly, enforcement proceedings were instituted in 2007 and a domestic court ordered the seizure and sale of Mr Mindek's share of his house that he owned together with his wife. At an auction on 17 March 2011, the neighbour himself placed the only bid to buy Mr Mindek's share in the property, offering the minimum price allowed by law, namely one third of its market value. The court declared that the neighbour had satisfied the conditions to be awarded the share in the property, but specified that the decision properly awarding him that share would be delivered at a later date.

The court officially awarded the property to the neighbour on 18 November 2011. In the meantime, on 2 May 2011, Mr Mindek had settled the debt in full. Only the costs of the enforcement proceedings remained to be paid, but the court refused to specify those costs at that time. However, the fact that Mr Mindek had already paid the debt in full was considered solely in distributing the proceeds of the sale; his request to discontinue the enforcement procedure was rejected since he had only settled his debt after the sale on 17 March 2011. This decision was subsequently upheld on appeal and Mr Mindek's constitutional complaints were declared inadmissible.

Proceedings to partition the interest of the neighbour from that of Mr Mindek's wife by selling the house entirely and dividing the proceeds are currently still pending.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Mr Mindek complained that the forced sale of his house was not justified and grossly unfair, emphasising that he had paid the relevant debt by the time the court awarded the house to his neighbour and that he and his wife would be left homeless if the partition

[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

for co-ownership proceedings went in the favour of their neighbour as they would not have enough money to buy out his share in the house.

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

**Just satisfaction**: Mr Mindek did not submit any claim for non-pecuniary damage. The Court further noted that Mr Mindek, relying on its finding of a violation of Article 1 of Protocol No. 1, may bring an action for unjust enrichment before the domestic courts. It therefore considered that there was no call to award him any sum in respect of pecuniary damage. Lastly, the Court awarded Mr Mindek 1,050 euros (EUR) in respect of costs and expenses.

## Mihhailov v. Estonia (no. 64418/10)

The applicant, Aleksandr Mihhailov, is a stateless person who was born in 1976 and lives in Narva (Estonia). The case concerned his complaint about police beatings during his arrest and detention, as well as a failure to carry out an effective investigation into those allegations.

On 29 April 2009, the police received an emergency call concerning two young men in Narva, Estonia. The caller reported that one of the men was carrying a knife and that the other was drunk. Accordingly, the police arrested the two men, one of whom was Mr Mihhailov. Mr Mihhailov alleges that, during his arrest, the police punched him, stepped on him, and otherwise physically abused him for no reason. He claims he was subjected to further severe and groundless beatings in detention. Mr Mihailov was taken to hospital the next day with concussion, but was released shortly afterwards.

Mr Mihhailov lodged a complaint of police ill-treatment with the authorities. After initial refusals, a criminal investigation was launched on 5 May 2009 and one month later statements were taken from the accused police officers. An assessment of Mr Mihhailov's medical records and certain other documents was also ordered in June 2009 and two months later a forensic medical expert gave his opinion in which he concluded that Mr Mihhailov's injuries must have been inflicted shortly before he had seen a doctor on 30 April 2009, but that their exact cause could not be established. Statements were also taken from other police officers, four children who had witnessed the arrest, other detainees and ambulance workers who had been called to the police station to treat Mr Mihhailov. The authorities repeatedly refused, however, Mr Mihaillov's requests that he himself be examined by a medical expert, that statements be obtained by other relevant witnesses, that a face-to-face confrontation be held between himself and witnesses or the accused police officers and that recordings from the police station's security cameras be examined. Ultimately, on January 2010, the investigator decided to discontinue the investigation. He found that the use of force against Mr Mihhailov had been justified given his aggressive behaviour both during his arrest and ensuing police custody. Statements by Mr Mihhailov's fellow detainees in support of his version of events were found not to be credible. Appeals against this decision were refused.

In parallel proceedings, Mr Mihhailov was acquitted of misdemeanour charges due to lack of evidence.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, Mr Mihhailov complained about his treatment by the police, alleging that the use of force had been wholly uncalled for and that the investigations against the police had been ineffective.

**Violation of Article 3**

**Just satisfaction**: EUR 10,000 (non-pecuniary damage) and EUR 4,500 (costs and expenses)

## Hunguest Zrt v. Hungary (no. 66209/10)

The applicant company, Hunguest Zrt, is a company based in Budapest. The case concerned the company's complaint about being ordered to pay more than one million euros as a security deposit pending the outcome of a property claim against it lasting almost ten years.

On 31 May 2000 a property claim was brought against the applicant company requesting it to pay 275 million Hungarian forints (HUF) (approximately 1,057,000 euros (EUR) at the time). From March 2011 the company was obliged to deposit this amount on the bailiff's trust account as security until the end of the proceedings. During the proceedings, the company requested to have the deposit released, arguing that its financial situation was satisfactory and that there was therefore no need for such a deposit, and offering other securities in exchange; these requests were all turned down. In a final decision of April 2010 the domestic courts found partly in favour of the plaintiff and ordered the company to pay HUF 137,280,00 (EUR 514,000 at the actual rate) plus interest accrued. The interest accrued amounted to approximately HUF 189,500,000 (EUR 700,000 at the actual rate), which exceeded the principal sum awarded. Ultimately, the company had to surrender the whole deposit and to pay about another HUF 90 million (EUR 330,000).

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), the applicant company complained about the excessive length – nine years and 11 months – of the property claim proceedings. Further relying on Article 1 of Protocol No. 1 (protection of property), it also complained that, due to the serious delay in handling the case, a very high amount of default interest had become due, while the significant amount it had been ordered to deposit as security had not yielded any interest.

**Violation of Article 6 § 1**
**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 redy for decision and reserved it for decision at a late stage.

## Apap Bologna v. Malta (no. 46931/12)
## Montanaro Gauci and Others v. Malta (no. 31454/12)

Both cases concerned the requisitioning of property by the State.

The applicant in the first case, Louis Apap Bologna, is a Maltese national who lives in Sliema (Malta). Mr Apap Bologna owns a two-storey house in Gzira (Malta) which he inherited from his uncle when he died in 1975. The house was requisitioned in 1976. Throughout the years while the requisition order has been in force, Mr Apap Bologna has received annual rent of approximately 93 euros (EUR) from the Housing Authority. This amount was increased to approximately EUR 185 in 2010.

In October 2009 Mr Apap Bologna brought constitutional redress proceedings against the Housing Authority and the Attorney General, requesting that the requisition order be annulled, that the property be released in his favour and that he be awarded compensation. Ultimately, in February 2012, the Constitutional Court found in his favour and awarded him EUR 16,000 in compensation. However, it refused to annul the requisition order, finding that it would not be appropriate to release the property and evict the tenant, who was disabled and lived on social benefits. It also considered that it did not have the power to impose a higher rent for the future, when such rent was not provided for by the law.

The applicants in the second case are six members of the same family who are Maltese nationals and live in Sliema, St. Julian's and Gozo (Malta). They inherited a house in Rabat (Malta) from their late father in 1997 which had been requisitioned in 1987. The rent fixed by the authorities amounted to approximately EUR 35 annually. This amount was increased to approximately EUR 185 in 2010.

In September 2008 the applicants also brought constitutional redress proceedings, requesting that the courts: award them compensation for losses incurred as a result of inadequate rent and their inability to develop their property; annul the requisition order; release the property; and establish fair conditions in respect of their property, including a fair rent. Ultimately, in November 2011 the Constitutional Court awarded the applicants EUR 14,000, but found that the requisition had been lawful and in the public interest, thus it was not required to annul the requisition order.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), all the applicants complained about the requisitioning of their property. They notably alleged that the compensation awarded to them was ridiculously low and did not provide sufficient redress and that, in any case, their property continued to be requisitioned for a rent much lower than its market value. Mr Apap Bologna also relied on Article 13 (right to an effective remedy).

- case of ***Apap Bologna***:

**Violation of Article 1 of Protocol No. 1**
**Violation of Article 13 taken in conjunction with Article 1 of Protocol No. 1**

**Just satisfaction**: EUR 30,000 (pecuniary damage) and EUR 10,000 (costs and expenses)

- case of ***Montanaro Gauci and Others***:

**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 insofar as pecuniary damage was concerned was not redy for decision and reserved it for decision at a late stage. The applicants did further not submit any request in respect of non-pecuniary damage.

## Pascari v. the Republic of Moldova (no. 25555/10)

The applicant, Igor Pascari, is a Moldovan national who was born in 1983 and lives in Chisinau. The case concerned his complaint about the unfairness of proceedings in which he was found guilty of causing a road traffic accident.

In August 2009 Mr Pascari, who is a bus driver, was involved in an accident with a car. According to the police, the driver of the car had changed lanes without paying attention to Mr Pascari's bus, which had been overtaking it in another lane. A decision was thus issued by the traffic police finding the driver of the car responsible for the accident. The driver of the car contested that decision before the courts, but the decision was subsequently upheld at first-instance. However, on appeal, in November 2009, Mr Pascari was found responsible for causing the accident as he had not kept a safe distance between his bus and the vehicle in front of him. Mr Pascari was not involved in either set of proceedings and, under domestic law, was not allowed to challenge the Court of Appeal's decision. As a result of the judgment of November 2009, the traffic police issued a new decision finding Mr Pascari responsible for the accident in August 2009.

Relying in particular on Article 6 § 1 (right to a fair trial), Mr Pascari complained that the criminal charges against him had been determined in court proceedings in which he had not been involved.

**Violation of Article 6 § 1**

**Just satisfaction**: EUR 2,500 (non-pecuniary damage) and EUR 590 (costs and expenses)

## Turturica and Casian v. the Republic of Moldova and Russia (nos. 28648/06 and 18832/07)

The case concerned new rules adopted by the authorities of the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT") with regard to car registration plates. Notably, from November 2004 any car with non-MRT registration plates could only enter the territory of the MRT after paying custom duties.

The applicants, Iurie Turturica and Petru Casian, are two Moldovan nationals who were born in 1962 and 1951, respectively, and live in Lunga and Corjova, in the Transdniestrian region of Moldova.

Like many other inhabitants of the MRT, both applicants refused to use registration plates issued by the MRT authorities because they are not recognised by any other country. Thus, in 2005 and 2007 Mr Turturica and Mr Casian had their cars confiscated by custom officers and fines imposed on them for failing to observe the new customs rules. In particular, Mr Turturica had two cars seized and fines imposed which were equal to 20 percent of the value of the first car and 50 percent of the value of the second car. He has never recovered his cars, despite challenging one of the decisions to fine him before the MRT courts and despite criminal proceedings having been brought by the Moldovan authorities for the unlawful seizure of the first car confiscated. Following the seizure of his car, Mr Casian paid a 30 euro fine and recovered his car. He complained to the Moldovan authorities who asked the Joint Control Commission (set up to monitor the implementation of an agreement signed in 1992 by the Presidents of the Russian Federation and the Republic of Moldova to put an end to the military conflict in the Transdniestrian region of Moldova) and foreign ambassadors to examine the matter. The OSCE was also informed. Ultimately, however, the Moldovan authorities informed Mr Casian that they did not have the means necessary to solve the problem of the seizure of his car.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), the applicants complained about the seizure of their cars and the imposition of fines on them.

**Violation of Article 1 of Protocol No. 1 by Russia**
**No violation of Article 1 of Protocol No. 1 by the Republic of Moldova**

**Just satisfaction**: EUR 6,000 to Mr Turturica and EUR 30 to Mr Casian in respect of pecuniary damage, EUR 3,000 to Mr Turturica and EUR 1,500 to Mr Casian in respect of non-pecuniary damage, and EUR 1,500 to Mr Turturica and EUR 2,000 to Mr Casian in respect of costs and expenses

## Medipress-Sociedade Jornalística, Lda v. Portugal (no. 55442/12)*

The applicant, Medipress-Sociedade Jornalística, LDA, is a Portuguese company based in Paço de Arcos (Portugal).

The case concerned a civil judgment against Medipress-Sociedade Jornalística, LDA, for the publication of an article alleging that the then Portuguese Prime Minister had taken drugs.

On 7 October 2004 the magazine *Visão*, which the applicant company took over in 2008, published an article entitled "Wake-up call for the President?", alleging that the then Prime Minister (P.S.L.) had taken hard drugs. In September 2007, P.S.L., claiming that the article had damaged his reputation, sued the article's author and the company Edimpresa-Editora, the magazine's former proprietor, in the Oeiras District Court.

In a judgment of 22 September 2010 the Oeiras District Court partly granted the claim of P.S.L., finding that he had sustained damage to his reputation, and ordered the company Medipress-Sociedade Jornalistíca, LDA, jointly with the author of the article, to pay 30,000 euros (EUR) for the non-pecuniary damage caused. The judgment was upheld on 21 June 2011 by the Court of Appeal, which found in particular that the allegation that the former Prime Minister had taken hard drugs

did not fall within the exercise of the right to impart information and was unlawful. The Supreme Court of Justice upheld that judgment on 14 February 2012.

The company Medipress-Sociedade Jornalistíca, LDA, paid to P.S.L. the total sum of EUR 30,000.

Relying on Article 10 (freedom of expression), the company Medipress-Sociedade Jornalistíca, LDA, alleged that the award of damages for impugning the honour and reputation of the former Prime Minister had breached its right to freedom of expression.

**Violation of Article 10**

**Just satisfaction**: EUR 30,000 (pecuniary damage) and EUR 8,919 (costs and expenses)

## Nasrettin Aslan and Zeki Aslan v. Turkey (no. 17850/11)*

The applicants, Mr Nasrettin Aslan and Mr Zeki Aslan, two brothers, are Turkish nationals who were born in 1973 and 1987 respectively and live in Hakkâri (Turkey).

The case concerned their allegations of ill-treatment at the time of their arrest and transfer to the police station.

On 4 June 2010 a pro-Kurdish party (Barış ve Demokrasi Partisi – BDP) organised a demonstration in Hakkâri during which incidents took place, especially in a neighbourhood near police quarters. A number of individuals, including children, threw stones at the police and attacked a police vehicle before taking refuge in the surrounding buildings. According to the brothers, on the day of the incident Nasrettin Aslan was visiting the home of his nephew, located near the police quarters, to take the latter to hospital. On his arrival he was allegedly manhandled by police officers who asked him to keep an eye on his children, and Nasrettin Aslan replied that the children in question were not his own. His brother Zeki Aslan then intervened to separate them. According to the authorities, the brothers physically assaulted the police officers, who used force, in a sufficient and proportionate manner, in order to immobilise them. On the same day the brothers were taken into police custody and questioned by the police, without legal assistance; they alleged that they were struck by the police during their transfer. A medical examination, carried out before the police interview, revealed a number of bruises.

On 5 June 2010 the brothers filed a criminal complaint with the office of the public prosecutor, who gave a discontinuance decision on 11 June 2010, upheld by the Van Assize Court on 8 July 2010. In the meantime the public prosecutor of Hakkâri brought criminal proceedings against the Aslan brothers for assaulting civil servants in the course of their duties and causing damage to public property. In June 2013 they were convicted by the Hakkâri Criminal Court on the assault charge; the proceedings concerning the other charge are still pending.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the Aslan brothers complained that they had been subjected to police violence during their arrest and transfer to the police station. They also complained about the inadequacy of the investigation.

**No violation of Article 3** (treatment)
**Violation of Article 3** (investigation)

**Just satisfaction**: EUR 5,000 each to Mr Nasrettin Aslan and Mr Zeki Aslan in respect of non-pecuniary damage, and EUR 2,800 to the applicants jointly in respect of costs and expenses

## Toptanış v. Turkey (no. 61170/09)

The applicant, Abbas Toptanış, is a Turkish national who was born in 1974 and lives in İzmir (Turkey). The case concerned his complaint about a failure to conduct a full investigation after he was accidentally shot near a military compound.

On 14 October 2008, between 8 p.m. and 9 p.m., Mr Toptanış collapsed suddenly when on his way to meet friends from the construction site where he worked near Foça, İzmir. A bullet was found between his ribs, and his injury was life-threatening. For medical reasons, the bullet was provisionally left in his body.

A prompt investigation into the incident found that no gunshots had been heard by witnesses at the site, that the lack of gunshot residue on Mr Toptanış's jacket indicated a shot from long-distance, and that a firing practice had been underway that night at the nearby shooting ranges of the 7th Gendarmerie Commando Regiment. The police concluded that Mr Toptanış must have been hit by a stray bullet that had ricocheted during the military firing practice.

In the meantime, at 3 p.m. on 15 October 2008, gendarme officers interviewed Mr Toptanış although he was still in a critical condition. He waived his right to a lawyer and stated that he did not wish to press criminal charges. He repeated this in November before the public prosecutor after being released from hospital. Because there was therefore no official complaint as required under domestic law for the prosecution of a crime of negligence, the authorities decided not to prosecute and the investigation was concluded. No further steps were taken even when the bullet in Mr Toptanış body was later extracted and delivered to the prosecutor.

In March 2009, Mr Toptanış brought a claim for compensation against the Ministry of the Interior. However, the İzmir Administrative Court found that there was no tangible evidence connecting the bullet to the regiment's firing practice, and that Mr Toptanış had hindered the collection of evidence by deciding not to press charges.

Relying in particular on Articles 2 (right to life), Mr Toptanış alleged that the investigation into his shooting had been obviously ineffective, since the investigation had been closed without the bullet extracted from his body being subjected to a ballistic examination or a perpetrator being identified.

**Violation of Article 2** (investigation)

**Just satisfaction**: EUR 20,000 (non-pecuniary damage) and EUR 2,590 (costs and expenses)

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