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

Press Release
issued by the Registrar of the Court

ECHR 213 (2016)
21.06.2016

Judgments of 21 June 2016

The European Court of Human Rights has today notified in writing 26 judgments[1]:

12 Chamber judgments are summarised below; for six others, in the cases of *Tchankotadze v. Georgia* (application no. 15256/05), *Ramadan v. Malta* (no. 76136/12), *Ramos Nunes de Carvalho e Sá v. Portugal* (nos. 55391/13, 57728/13 and 74041/13), *Tato Marinho dos Santos Costa Alves dos Santos and Figueiredo v. Portugal* (nos. 9023/13 and 78077/13), *Oleynik v. Russia* (no. 23559/07), and *Naït-Liman v. Switzerland* (no. 51357/07), separate press releases have been issued;

eight 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 (*).

Lähteenmäki v. Estonia (application no. 53172/10)

The applicant, Signe Kristiina Lähteenmäki, is an Estonian national who was born in 1981 and lives in Vara Parish, Tartu County (Tartumaa, Estonia). The case concerned the refusal of the civil courts to award her compensation following a traffic accident.

In May 2008 Ms Lähteenmäki, suspected of staging a traffic accident, was charged with insurance fraud. The criminal proceedings against her were discontinued in December 2008 at the request of the prosecutor, and with the consent of Ms Lähteenmäki and her counsel, on the grounds that the offences were of minor importance and her guilt was negligible. She was ordered to pay procedural costs and to perform 80 hours' community service.

After the criminal proceedings against her had been discontinued, Ms Lähteenmäki instituted civil proceedings claiming compensation from the insurance company for the damage caused to her vehicle by the traffic accident. She submitted the ruling ordering the discontinuance of the criminal proceedings against her as evidence that she had not been involved in staging the accident. The insurance company submitted the decisions by which Ms Lähteenmäki's co-accused had been convicted of staging an accident, arguing that those decisions refuted her assertion that there had been a genuine traffic accident. Her claim was dismissed at first instance in December 2009. She appealed, complaining of a breach of her right to presumption of innocence because the first-instance court had treated her as being guilty of a criminal offence, even though she had not been convicted of staging the traffic accident. In May 2010 the Court of Appeal, relying on Article 202 of the Code of Criminal Procedure, rejected her claim essentially because she had failed to prove the truth of her allegations.

Relying in particular on Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights, Ms Lähteenmäki complained about the reasoning of the national courts in the judgments refusing to award her compensation, submitting that they had treated her as being guilty of a criminal offence even though the criminal proceedings against her had been discontinued.

[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

No violation of Article 6 § 2

Mugoša v. Montenegro (no. 76522/12)

The applicant, Nebojša Mugoša, is a Montenegrin national who was born in 1962 and is currently detained in Spuž (Montenegro). The case concerned his complaints about a decision extending his pre-trial detention.

Mr Mugoša was detained on 21 February 2011 on suspicion of murder. His detention was then extended in March, May and July 2011. On 23 September 2011 Mr Mugoša requested his release, arguing that there had been no decision to further extend his detention after 18 September 2011, corresponding to the time-limit of two months provided for under the relevant legislation for extending detention. On the same day he received by fax a decision of 22 September 2011 extending his detention; it bore no signature or stamp. He was served with this – stamped and signed – decision three days later. His subsequent appeals complaining about the detention order were rejected. He thus lodged a constitutional appeal, complaining that his detention after 18 September 2011 had not been extended within the statutory time-limit of two months, that the copy of the detention order of 22 September 2011 had not been signed or stamped and that that decision had breached his presumption of innocence as it had referred to him depriving X of his life by shooting him. His constitutional appeal was dismissed in April 2012: the Constitutional Court found in particular that the statutory time-limit for extending detention had not been mandatory and that the lower courts had not stated that Mr Mugoša had been guilty.

Relying on Article 5 § 1 (c) (right to liberty and security), Article 6 § 1 (right to a fair trial), and Article 6 § 2 (presumption of innocence), Mr Mugoša alleged: that his detention between 18 and 22 September 2011 had been unlawful; that the Constitutional Court had not addressed his complaint about the decision of 22 September 2011 not bearing a signature or stamp; and that the decision of 22 September 2011 extending his detention had pronounced him guilty.

Violation of Article 5 § 1
No violation of Article 6 § 1
Violation of Article 6 § 2

Just satisfaction: EUR 5,850 euros (EUR) (non-pecuniary damage) and EUR 1,300 (costs and expenses)

Soares v. Portugal (no. 79972/12)

The applicant, António Alberto Mota Soares, is a Portuguese national who was born in 1957 and lives in Góis (Portugal). The case concerned his criminal conviction for reporting an alleged misuse of public money.

In November 2009 Mr Soares, a chief corporal in the National Republican Guard (*Guarda Nacional Republicana*), working at the Góis territorial post, sent an email to the General Inspectorate of Internal Administration alleging that the Commander of the Arganil territorial post had been misusing public money. He claimed that his intention was to prompt an investigation into the allegations, which he admitted were based on a rumour.

Three different entities – the prosecuting authorities, the General Inspectorate of Internal Administration and the National Republican Guard – then investigated Mr Soares' allegations throughout 2010, without being able to establish their veracity or whether the commander had committed a criminal act or had acted unlawfully.

In July 2011 the public prosecutor brought charges against Mr Soares for aggravated defamation on the grounds that the statements made in his email called into question the commander's honesty,

honour and professional reputation. In these criminal proceedings brought against Mr Soares, the courts were not able to confirm the rumour which had given rise to the allegations and decided that he had not acted in good faith. In a judgment of January 2012, upheld on appeal in September 2012, he was therefore convicted of aggravated defamation and sentenced to 80-day fines, totalling 720 euros (EUR), and ordered to pay EUR 1,000 in damages to the commander.

Disciplinary proceedings were also brought against Mr Soares, and in a final report of February 2013 it was concluded that he had breached his duty of loyalty, as he should have first reported the rumour via internal channels within the hierarchy of the National Republican Guard.

Relying in particular on Article 10 (freedom of expression), Mr Soares complained about his conviction for aggravated defamation, maintaining that he had acted in good faith in disclosing the suspicion of alleged misuse of public money within the National Republican Guard.

No violation of Article 10

Eze v. Romania (no. 80529/13)

The case concerned a complaint about conditions of detention in Rahova Prison.

The applicant, Iwuchukwu Chinagolu Eze, is a Nigerian national who was born in 1981 and is currently serving a 13-year sentence in Giurgiu Prison (Romania) for drug-trafficking offences.

Mr Eze was detained in Rahova Prison from July 2012 until his transfer to Giurgiu Prison in July 2014, with intermittent periods also spent in the prison hospital. He alleged in particular that the conditions of his detention in Rahova Prison were inhuman and degrading, on account in particular of overcrowding and lack of hygiene. He relied on Article 3 (prohibition of inhuman or degrading treatment).

Violation of Article 3

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

G. v. Russia (no. 42526/07)

The case concerned an allegation of inadequate medical care in detention for an inmate suffering from rectal cancer.

The applicant, Mr G., is a Russian national who was born in 1955 in the Omsk Region (Russia). Until his arrest he lived in the village of O. in the same region. He was arrested in November 2006 on suspicion of large-scale bank fraud by abuse of position and placed in detention on remand. His detention was extended over the following 15 months, the authorities relying on the gravity of the charges against him, the risk of him absconding and of him hampering the investigation by putting pressure on witnesses. Mr G., suffering from a number of illnesses including rectal cancer, made repeated requests to be released on medical grounds, which were all rejected until February 2008 when the trial court accepted that his health condition had become serious and warranted his release.

On arrival in prison, Mr G. was suffering from colon cancer. In December 2006 his condition worsened when his sigmoid colon prolapsed and fell out of his rectum, resulting in his having faecal incontinence. Over the following year he was admitted to the medical unit in the remand prison on a number of occasions and examined by senior medial officials in the colorectal department of a civilian hospital, who recommended urgent surgery. However, he was also examined at various intervals by the prison surgeon and doctors, who saw no need for urgent surgery. Eventually, in October 2007, Mr G. made a request under Rule 39 of the Rules of Court (interim measures) to the European Court of Human Rights to indicate to the Russian authorities that he should be allowed,

among other things, to have urgent colorectal surgery in a specialist hospital. The European Court granted this request and he had a colostomy in December 2007.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr G. alleged that the authorities had failed to provide him with adequate medical care during his detention, delaying urgent surgery and failing to provide him with adult absorbent briefs or hygiene products for his condition. He further complained under Article 3 that the conditions of his detention had been inhuman and degrading – particularly on account of overcrowding and lack of privacy in the cells where he was detained, forcing him to go to the toilet and wash in full view of other inmates and the prison guards and causing him considerable distress given his serious health condition. He made a further complaint under Article 5 § 3 (entitlement to trial within a reasonable time or to release pending trial), alleging that the reasons for extending his pre-trial detention had not been sufficiently justified, especially given his poor health.

Violation of Article 3 (inhuman and degrading treatment) – on account of the quality of the medical treatment in detention
Violation of Article 3 – on account of the conditions of detention
Violation of Article 5 § 3

Just satisfaction: EUR 16,500 (non-pecuniary damage) and EUR 4,000 (costs and expenses)

Ibragim Tsechoyev v. Russia (no. 18011/12)
Mutayeva and Ismailova v. Russia (no. 33539/12)

The cases concerned two abductions and disappearances in Ingushetia and Dagestan.

The applicant in the first case, Ibragim Tsechoyev, is a Russian national who was born in 1983 and lives in Ordzhenikidzevskaya, Ingushetia (Russia). He alleged that his brother, Abubakar Tsechoyev, born in 1978, was abducted and killed by Russian servicemen.

On 22 March 2012 a group of armed men in camouflage uniforms and balaclavas broke into the water-pumping station in Ordzhenikidzevskaya (Ingushetia) where Abubakar Tsechoyev was at work and, tying him and three other employees up and blindfolding them, subjected them to beatings for 40 minutes. The men then placed Abubakar Tsechoyev, unconscious, in their UAZ vehicle and drove away in the direction of Chechnya; he has not been seen since.

Ibragim Tsechoyev immediately reported the abduction to the authorities and a criminal investigation was initiated on 24 March 2012. Thus, investigators examined the crime scene and various people were interviewed within the following days and months, including the employees of the water-pumping station who had witnessed the abduction, the applicant and other family members. 12 police officers, who had been manning checkpoints located in the vicinity, were also questioned and stated that they had not seen any Russian military vehicle passing through on the night of the abduction. Furthermore, at Ibragim Tsechoyev's request, CCTV footage was collected on 30 March 2012 from the building of a school located on the only road leading to the pumping station; however the video recordings around the time of the abduction had already been overwritten. The investigation, suspended in August 2012 for failure to identify those responsible for the abduction, has since been resumed and suspended on a number of occasions and is currently still pending.

In April 2013 Ibragim Tsechoyev complained about ineffectiveness of the investigation, alleging that the investigators had failed to take a number of crucial investigative steps. His complaint was rejected as unsubstantiated.

The applicants in the second case, Zukhra Mutayeva and Ayshat Ismailova, are Russian nationals who were born in 1980 and 1971 respectively and live in Zubutli-Miatli, Kizilyurt district, Dagestan

(Russia). They also alleged that their husband and brother, Kamil Mutayev, born in 1976 was abducted and killed by Russian servicemen.

On 2 May 2012 Mr Mutayev was driving through the centre of town in Kizilyurt with his 12-year old son when his car was blocked by two other cars with heavily tinted windows and eight armed, masked men in black uniforms knocked him down and forced him into one of their vehicles. His son, threatened at gunpoint, was forced back into his father's car.

The applicants immediately reported the abduction to the authorities and the same day the police examined the crime scene and questioned Mr Mutayev's son, the only eyewitness to the abduction, and Ms Ismailova. An official investigation was thus initiated on 14 May 2012 and the crime scene was examined again on 6 June 2012, this time by investigators. In August 2012 the registration log of detainees at the local police station was examined and the police officers on duty on the day of the abduction were questioned; they stated that neither Mr Mutayev nor his car had been brought in. The investigation, suspended in September 2012 and then resumed and suspended on a number of occasions since then, is currently still pending.

In both cases, the Government submitted that there was no evidence of Russian servicemen's involvement in the abduction, pointing out that the eye-witnesses to the abduction in the first case had been blindfolded and could not therefore be relied upon and the only eye-witness in the second case was a minor.

Relying in particular on Article 2 (right to life), the applicants in both cases alleged that their relatives were abducted and killed by Russian servicemen and that the authorities had failed to carry out an effective investigation into their allegations.

- Case of ***Ibragim Tsechoyev***:

No violation of Article 2 (right to life)
Violation of Article 2 (investigation)

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

- Case of ***Mutayeva et Ismailova***:

No violation of Article 2 (right to life)
Violation of Article 2 (investigation)

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 1,000 (costs and expenses) jointly to Zukhra Mutayeva and Ayshat Ismailova

Igoshin v. Russia (no. 21062/07)*

The applicant, Nikolay Nikolayevich Igoshin, is a Russian national who was born in 1982. He is currently serving a 23-year prison sentence in the IK-8 correctional colony in the Orenburg Region (Russia).

The case concerned Mr Igoshin's allegations of ill-treatment by police officers immediately after his arrest and his claim that no effective investigation had been carried out.

Mr Igoshin was arrested on 11 February 2004 on suspicion of murder and burglary, and was taken to the Dzerzhinsky District police station in Orenburg, where he was allegedly subjected to ill-treatment by police officers, including being struck with a full water bottle, tortured with an electric current and asphyxiated with a plastic bag. On 13 February 2004, on being admitted to the temporary detention centre, the applicant was examined by a medical auxiliary, who noted a long-standing fracture of his right index finger and a healed bruise on his back.

On the same day the applicant complained at the remand hearing that he had been tortured following his arrest. On 16 February 2004 he was transferred to Orenburg Prison, where on 17

February 2004 he was examined by Dr A., who observed various injuries to his body. The doctor's report was sent to the prosecutor's office of the Dzerzhinsky District of Orenburg.

The prosecutor examined the applicant's allegations and dismissed them as unfounded. The Regional Court conducting the criminal proceedings against Mr Igoshin reached the same conclusion. It disregarded Dr A.'s report, observing that on 19 February 2004, two days after the doctor's examination, the therapist and dermatologist who had examined the applicant had not mentioned the injuries referred to by their colleague. On 21 February 2008 Dr A. was convicted by the Leninsky District Court of Orenburg of giving false testimony.

On 3 May 2006 Mr Igoshin was found guilty as charged. The judgment was upheld by the Russian Supreme Court on 27 October 2006.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Igoshin alleged that he had been severely beaten while in police custody and that no effective investigation had been carried out in that regard.

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

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 1,100 (costs and expenses)

Vasenin v. Russia (no. 48023/06)

The applicant, Yevgeniy Vasenin, is a Russian national who was born in 1973 and is currently detained in a psychiatric hospital in the Kostroma Region (Russia). The case concerned his complaint about the unfairness of criminal proceedings brought against him and inadequate medical care in detention.

Mr Vasenin was arrested in November 2005 on suspicion of setting fire to a car, blowing up another car and robbery and was placed in a temporary detention facility in view of the gravity of the charges and the risk of his absconding. Before his trial, he lodged an application for a preliminary hearing on his case, arguing that he had an alibi for one of the offences and that he had incriminated himself as a result of police brutality. At the preliminary hearing on his case, which he attended, he also insisted on his transfer to a psychiatric hospital and on his personal participation at his trial; positions which were not backed up by his counsel or appointed legal guardian. The court thus ordered his continued detention pending trial and stated that, given Mr Vasenin's mental condition, Russian law did not call for his presence at trial.

Following a trial hearing held in his absence, Mr Vasenin was convicted as charged on 3 May 2006. Relying on a psychiatric report carried out before his trial which concluded that he was suffering from paranoid schizophrenia, the trial court ordered his treatment in a high-security psychiatric institution. Mr Vasenin was eventually admitted to Oryol Psychiatric Hospital on 11 June 2006 and, after that, to two other psychiatric hospitals. He was given standard psychiatric treatment with antipsychotic medication in all those hospitals and, his condition having significantly improved, he was eventually discharged in August 2009. He was also treated during his detention for hepatitis, brought under control in June 2007, and tuberculosis, from which he made a complete recovery in November 2008.

In the meantime, Mr Vasenin appealed against his conviction, alleging that he had confessed under pressure to the arson attacks and that his defence team, assigned against his will, had been manifestly ineffective. His appeal was rejected on the ground that only his lawyer or legal guardian were allowed to appeal.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Vasenin complained that he had been infected with tuberculosis and hepatitis in detention and that the authorities had failed

to provide him with adequate medical care either for those illnesses or his mental condition. Further relying on Article 5 § 1 (right to liberty and security), he also complained about his delayed admission to a mental institution from 3 May to 11 June. Lastly, he made a number of complaints under Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing) about the unfairness of the criminal proceedings against him, alleging in particular that it had not been possible for him to attend his trial, that his legal assistance had been poor and that he had been stripped of his right to appeal against the judgment of the trial court.

No violation of Article 3
Violation of Article 5 § 1
Violation of Article 6 §§ 1 and 3 c)

Just satisfaction: EUR 9,700 (non-pecuniary damage) and EUR 3,000 (costs and expenses)

Ayboğa and Others v. Turkey (no. 35302/08)
Seki v. Turkey (no. 44695/09)

The cases concerned allegations of shortcomings in review proceedings concerning detention on remand.

The applicants in the first case, Ali Ayboğa, Abdurrezzak Ayboğa, Abdülcebbar Ayboğa, Salih Ayboğa, and Dergah Bitkin, are Turkish nationals who were born in 1947, 1976, 1973, 1983, and 1987 respectively. At the time of the application they were being held in detention in Buca F-Type prison in İzmir (Turkey). The applicants were placed in pre-trial detention on 27 July 2007 on suspicion of being members of a criminal organisation. The applicants' lawyer subsequently objected to the order for the pre-trial detention of the first four applicants and repeatedly applied for their release pending trial. All his requests were rejected, without an oral hearing being held. In March 2008 Mr Ayboğa was indicted with establishing a criminal organisation and the other applicants with being members of a criminal organisation. Their pre-trial detention was extended and their lawyer's request for the first four applicants' release dismissed, also without an oral hearing being held, until 24 June 2008 when the trial court held its first hearing and they appeared before court. They were released on the same day.

The applicant in the second case, Deniz Seki, is a Turkish national who was born in 1970 and lives in Istanbul. Ms Seki was placed in detention on remand on 24 February 2009 and subsequently indicted for using drugs and providing drugs to third persons. All her requests for release were dismissed, without an oral hearing being held, until 1 October 2009 when the trial court held its first hearing and she appeared before the court. She was released the same day.

Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), all the applicants complained about not being able to appear before a court when their pre-trial detention was reviewed.

- Case of ***Ayboğa and Others***:

Violation of Article 5 § 4

Just satisfaction: EUR 750 (non-pecuniary damage) to each applicant and EUR 1,000 (costs and expenses) to the applicants jointly

- Case of ***Seki***:

Violation of Article 5 § 4

Just satisfaction: Ms Seki did not submit a claim for just satisfaction within the time-limit set by the Court.

Şahinkuşu v. Turkey (no. 38287/06)*

The applicants, Fariz Şahinkuşu and Medine Şahinkuşu, are Turkish nationals who were born in 1950 and 1956 respectively and live in Adana (Turkey). The case concerned the death of their son Ferid Şahinkuşu during his compulsory military service.

Ferid Şahinkuşu joined the army on 4 December 2003 in order to perform his compulsory military service. After his basic training he was sent to the district gendarmerie barracks in Erbaa (Tokat). On 29 December 2004 Ferid Şahinkuşu, the staff sergeant and another conscript went into town to buy heating supplies and to allow the staff sergeant to run some errands. The latter ordered the two conscripts to remain close to the vehicle until he returned. While they were waiting, Ferid Şahinkuşu suggested to his fellow conscript that they buy some food in the nearby supermarket. However, they encountered the staff sergeant and were reprimanded by him. The same day, at around 7 p.m., the staff sergeant struck Ferid Şahinkuşu for having disobeyed his orders. On 30 December 2004 Ferid Şahinkuşu committed suicide in the dormitory by shooting himself in the head with a fellow serviceman's weapon. He was airlifted to hospital, where he died from his injuries.

A criminal investigation was opened immediately. Statements were taken from the eyewitnesses and from the staff sergeant, and an autopsy was performed. The proceedings ended with a decision by the Sivas military prosecutor not to prosecute, on the grounds that there was no causal link between the conscript's death and the actions of the staff sergeant, and that no third party could be held responsible. That decision was upheld by the Malatya Military Court on 7 July 2006.

Meanwhile, on 30 December 2004, an administrative investigation into the suicide and possible negligence was opened against the captain and staff sergeant. The investigation report found that Ferid Şahinkuşu had publicly insulted the staff sergeant, with the result that the latter had been on sick leave for two days. On learning of this, Ferid Şahinkuşu had reportedly confided in his fellow servicemen, fearing in particular that his military service would be extended and that he would be punished; he had therefore committed suicide. The investigator also found that the staff sergeant and the captain had been negligent as they had not had Ferid Şahinkuşu admitted to hospital despite his having been diagnosed with psychological problems a few months earlier.

On 26 July 2005 the military prosecutor's office instituted proceedings against the staff sergeant on charges of assaulting his subordinates (Ferid Şahinkuşu and his fellow serviceman). On 4 November 2010 he was found guilty as charged and received a prison sentence of one month and 20 days, which was suspended. On 6 June 2011 an appeal lodged by Mr and Mrs Şahinkuşu was dismissed. The couple, and also Ferid Şahinkuşu's brothers and sisters, were paid damages by the Ministry of Defence after the Supreme Military Administrative Court partially granted their claim for compensation in a judgment of 14 February 2007.

Relying on Article 2 (right to life), Mr and Mrs Şahinkuşu complained of the death of their son during his compulsory military service, of the lack of measures to prevent the young man's suicide, of the inadequate nature of the investigation into his death and of their inability to obtain compensation owing to the lack of support following their son's death.

No violation of Article 2

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: www.echr.coe.int/RSS/en or follow us on Twitter @ECHR_Press.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)

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.