



Judgments concerning Hungary, Italy, the Republic of Moldova, Romania, Spain, Switzerland, and Turkey

The European Court of Human Rights has today notified in writing the following 19 judgments, of which 11 (in italics) are Committee judgments and are final. The others are Chamber judgments¹ and are not final.

Repetitive cases² and length-of-proceedings cases, with the Court's main finding indicated, can be found at the end of the press release. The judgments in French are indicated with an asterisk (*).

The Court has also delivered today judgments in the cases of De Luca v. Italy (application no. 43870/04) and Pennino v. Italy (no. 43892/04), for which a separate press release has been issued.

Belpietro v. Italy (application no. 43612/10)*

The applicant, Maurizio Belpietro, is an Italian national who was born in 1958 and lives in Milan. The case concerned his conviction for defamation after publishing an article by an Italian Senator referring to a "war" between judges and prosecutors on the one hand and the *Carabinieri* on the other hand, in the contexts of efforts to combat the Mafia. At the relevant time Mr Belpietro was director of a national daily newspaper which in 2004 published an article by Senator R.I. accusing Italian judges and prosecutors in particular of using political strategies in their fight against the Mafia. Two prosecutors, seeing the article as an infringement of their honour, lodged a complaint for defamation against R.I. and the applicant. Separate proceedings were brought against R.I. and ended in 2007 with a finding that there was no case to answer, on the grounds that R.I. had expressed his views in his capacity as a member of the Senate. Mr Belpietro was acquitted the same year. However, in 2009 he was sentenced on appeal to a suspended term of four months' imprisonment and ordered to pay substantial sums to each of the civil parties. He lodged an appeal on points of law, which was dismissed in 2010. Mr Belpietro alleged that his conviction for defamation had amounted to a violation of Article 10 (freedom of expression).

Violation of Article 10

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 5,000 (costs and expenses)

N.A. v. the Republic of Moldova (no. 13424/06)*

The applicant, N.A., is a Moldovan national who was born in 1984 and lives in Chişinău. The case chiefly concerned the failure of the Moldovan authorities to identify and punish the perpetrators of the gang rape of which she had been a victim. On 2 September 1997, when N.A. was thirteen, a group of boys took it in turn to rape her after she had met them in a disused shop in order to drink alcohol. Her mother lodged a rape complaint on her daughter's behalf in September 1997 and the authorities instituted criminal proceedings against the alleged perpetrators on unspecified dates. In March 2005 five of the accused were found guilty of gang rape of an underage girl and were

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a 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

² In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

sentenced, among other things, to a suspended term of five years' imprisonment and one year's probation. In June 2005, however, the Court of Appeal overturned the judgment and terminated the criminal proceedings against the five defendants on the grounds that an order discontinuing the proceedings had previously been made in respect of four of them and had never been set aside. N.A. lodged an appeal with the Supreme Court of Justice, which was dismissed in August 2005. Without relying on any specific provision, N.A. essentially alleged that the criminal investigation into her rape complaint had been ineffective and that her attackers had escaped unpunished.

Violation of Article 3 (prohibition of inhuman or degrading treatment) – in respect of the authorities' failure to fulfil the positive obligations imposed on them under this provision

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 1,150 (costs and expenses)

Antoneta Tudor v. Romania (no. 23445/04)*

The applicant, Antoneta Tudor, is a Romanian national who was born in 1951 and lives in Bucharest. The case concerned her inability to obtain access to all the documents kept by the former secret services under the communist regime (the Securitate) relating to her deceased father. In 2001 Ms Tudor obtained access from the National Council for the Study of the Archives of the Securitate ("the Council") to the files concerning her father, who had died several years previously in suspicious circumstances while he was under investigation by the Securitate. She applied unsuccessfully to the Council and to the Romanian Intelligence Service for access to two further files concerning him. In 2003 and 2004 the actions brought by Ms Tudor seeking access to the documents were dismissed by the Bucharest Court of Appeal and the High Court of Cassation and Justice respectively. In 2011, following requests for information made by the Romanian Government's Agent, the Council informed the applicant that it was in possession of one of the two files, and invited her to come and consult it. Ms Tudor alleged in particular that the hindrance of her right of access to the documents in question had amounted to a violation of Article 8 (right to respect for private and family life). She further complained of the incomplete nature of the information supplied by the Council and of the unreasonable length of time taken to send it to her.

Violation of Article 8

Just satisfaction: EUR 4,500 (non-pecuniary damage)

Epistatu v. Romania (no. 29343/10)

The applicant, Cristian Epistatu, is a Romanian national who was born in 1990 and lives in Bucharest. The case concerned Mr Epistatu's complaint about the conditions of his detention, notably on account of overcrowding, from 2 September 2010 to 25 August 2011 in Jilava Prison where he served part of a five and half year prison sentence for attempted aggravated murder. He relied in particular on Article 3 (prohibition of inhuman or degrading treatment).

Violation of Article 3 (degrading treatment) – on account of prison overcrowding

Just satisfaction: EUR 3,000 (non-pecuniary damage) and EUR 620 (costs and expenses)

Hadade v. Romania (no. 11871/05)

The applicant, Mircea Hadade, is a Romanian national who was born in 1957 and lives in Oradea (Romania). In September 2005 Mr Hadade was convicted of organising a criminal group and of unlawfully trafficking migrants, upheld in a final judgment of March 2006 when his sentence was reduced from five to four years' imprisonment. The case concerned his complaint about his related detention and trial. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), he complained notably about the cramped conditions of his detention in Oradea Prison.

Further relying on Article 5 § 3 (right to liberty and security), he also alleged that he had been placed and maintained in pre-trial detention without adequate justification and for an excessively long time.

Violation of Article 3 (degrading treatment) – in respect of the applicant’s conditions of detention
Violation of Article 5 § 3

Just satisfaction: EUR 10,000 (non-pecuniary damage)

Sardón Alvira v. Spain (no. 46090/10)

The applicant, Anibal Sardón Alvira, is a Spanish national who was born in 1942 and lives in Madrid. The case concerned criminal proceedings brought against Mr Alvira in which he had been found guilty in March 2008 of the asset-stripping and misappropriation of funds of an investment company, GESCARTERA, for which he was the administrator. He was sentenced to nine years’ imprisonment and was ordered, jointly with the rest of those found guilty, to pay nearly 88,000,000 Euros compensation. Relying in particular on Article 6 § 1 (right to a fair trial), Mr Alvira alleged in particular that the ensuing proceedings before the Supreme Court concerning his appeal on points of law had been unfair because he had been found liable as an economic beneficiary of the proceeds of a crime, even though he had never actually been formally charged in that capacity. He also alleged that the Supreme Court had wrongfully interpreted the national legislation on civil liability in his case and that neither the Supreme Court nor the Constitutional Court had provided sufficient reasoning in their decisions.

No violation of Article 6 § 1

Dembele v. Switzerland (no. 74010/11)

The applicant, Kalifa Dembele, is a Burkina Faso national who was born in 1975 and lives in Geneva. The case concerned the ill-treatment to which he had allegedly been subjected by gendarmes during an identity check and the lack of an effective investigation into the incident. On 2 May 2005 Mr Dembele was approached by two gendarmes who requested him to show his papers. He claimed that they had then hit him and had subjected him to racist abuse before pushing him to the ground in order to immobilise him. He then allegedly bit one of the gendarmes in an attempt to shake him off. Afterwards, a doctor’s report found that Mr Dembele was suffering from a distal fracture of the right collarbone. He was placed on sick leave for three weeks as a result. In May 2005 he lodged a complaint against the two gendarmes alleging ill-treatment. An initial investigation instituted by the judicial authorities into the actions of the gendarmes was discontinued. In November 2008 the Federal Court ordered the opening of a fresh investigation on the grounds that the first investigation had not been carried out in compliance with the standards of the European Convention on Human Rights. In November 2010 the proceedings were once again discontinued by the Principal Public Prosecutor. That decision was upheld in February 2011 by the Indictment Division. In September 2011 the Federal Court rejected an appeal by the applicant. Mr Dembele alleged in particular a violation of Article 3 in its substantive aspect (prohibition of inhuman or degrading treatment) and in its procedural aspect (lack of an effective investigation).

Violation of Article 3 (substantive aspect) – on account of the disproportionate use of force by the gendarmes against the applicant

Violation of Article 3 (procedural aspect) – on account of the ineffective investigation into the incident of 2 May 2005

Just satisfaction: EUR 15,700 (pecuniary damage), EUR 4,000 (non-pecuniary damage) and EUR 6,000 (costs and expenses)

Just satisfaction

Ayangil and Others v. Turkey (no. 33294/03)

The applicants, Fidan Ayangil, Fatma Ayangil, Mehmet Ayangil and Vildan Tatlı (Ayangil), are Turkish nationals who were born in 1952, 1930, 1950 and 1957 respectively and live in Ankara. The case concerned the family's complaint that the authorities had built a primary school on land the applicants owned in the Incesu neighbourhood of Ankara without formally expropriating it and without awarding them compensation. In its [principal judgment](#) of 6 December 2011 the Court held that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention. Today's judgment concerned the question of just satisfaction (Article 41 of the Convention).

Just satisfaction: EUR 180,000 (pecuniary damage) to the applicants jointly, and EUR 4,000 (non-pecuniary damage) jointly

Repetitive cases

The following cases raised issues which had already been submitted to the Court.

Kriston v. Hungary (no. 39154/09)

The case concerned the applicant's complaint that criminal proceedings brought against him for fraudulent bankruptcy and forgery of public documents had been excessively long, 14 years, and that, during those 14 years, he had been subjected to a travel ban as his passport had been withdrawn until the proceedings against him were terminated. He relied on Article 6 § 1 (right to a fair trial within a reasonable time) of the Convention and Article 2 § 2 of Protocol No. 4 (freedom of movement) to the Convention.

Violation of Article 6 § 1

Violation of Article 2 § 2 of Protocol No. 4

Dil v. Turkey (no. 2611/09)****İsmail Yılmaz v. Turkey (no. 58231/09)*******Murat Aktaş v. Turkey (no. 47359/09)*******Suut Aydın v. Turkey (no. 1508/08)****

These cases were concerned chiefly with the allegedly excessive length of the applicants' detention. The applicants relied, among other provisions, on Article 5 § 3 (right to liberty and security).

Violation of Article 5 § 3 – in all cases, except *Suut Aydın*

Violation of Article 5 § 4 – in the case of *Suut Aydın*

Violation of Article 5 § 5 – in the cases of *İsmail Yılmaz* and *Suut Aydın*

Violation of Article 6 § 1 – in the case of *Murat Aktaş*

Violation of Article 6 §§ 1 and 3 (c) – in the case of *Dil*

Length-of-proceedings cases

In the following cases, the applicants complained in particular about the excessive length of civil proceedings. They relied in particular on Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy).

Ágnes Kovács v. Hungary (no. 12089/07)***Beşerler Yapı San. ve Tic. A.Ş. v. Turkey (no. 14697/07)******Karamehmet and Elpe v. Turkey (no. 35075/05)*******Kolukırkoğlu v. Turkey (no. 21002/06)***

Violation of Article 6 § 1 – in the four cases

Violation of Article 13 – in the cases of *Ágnes Kovács* and *Beşerler Yapı San. ve Tic. A.Ş.*

In the following cases, the applicants complained in particular about the excessive length of criminal proceedings brought against them for fraud, in the first case, and fencing and forgery, in the second case. Both applicants relied on Article 6 § 1 (right to a fair trial within a reasonable time).

Czimbalek v. Hungary (no. 23123/07)

Garzó v. Hungary (no. 24485/07)

Violation of Article 6 § 1 – in both cases

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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.