



## Judgments concerning Croatia, Germany, Norway, Russia, Sweden, and Ukraine

The European Court of Human Rights has today notified in writing the following 12 Chamber judgments<sup>1</sup>, none of which is final.

### Brletić v. Croatia (application no. 42009/10)

The applicant, Ana Brletić, is a Croatian national who was born in 1954 and lives in Veliki Grđevac (Croatia). The case concerned two sets of proceedings related to salary arrears owed to Ms Brletić's husband (who died in 2000). In May 2002 the Croatian courts found that Ms Brletić's deceased husband had not received his full salary for the period from May 1998 to January 1999 and ordered the company he had worked for to pay his wife 24,540.81 Croatian Kunas (the equivalent at the time of 3,178.46 euros). The judgment became final in September 2002 and the company paid the debt. However, three years later the company brought civil proceedings against Ms Brletić alleging that the courts had miscalculated the portion of the salary that they had to pay which resulted in them paying the same debt twice. In February 2008 the courts found for the company and ordered the applicant to pay back to her husband's employer the sum awarded to her in the first set of proceedings. Her appeal as well as her constitutional complaint were then subsequently dismissed. Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, Ms Brletić complained that the national authorities had allowed the company to bring a new set of proceedings against her concerning a matter which had already been adjudicated, and had thus breached the *res judicata* principle.

#### Violation of Article 6 § 1

**Just satisfaction:** 9,669.46 euros (EUR) (pecuniary damage), EUR 4,000 (non-pecuniary damage) and EUR 3 900 (costs and expenses)

### Tierbefreier e.v. v. Germany (no. 45192/09)

The applicant, Tierbefreier e.V., is an association based in Germany which militates for animal rights. The case concerned an injunction preventing the association from disseminating film footage which was secretly taken, in 2003, by a journalist on the premises of a company performing experiments on animals for the pharmaceutical industry. The journalist used his footage to produce documentary films of different length which made critical comments, in particular about the way animals were treated on the company's premises. His films and excerpts of the footage were shown by several TV networks and the applicant association made a film – of about 20 minutes with the title "Poisoning for profit" – available on its website. Relying on Article 10 (freedom of expression), the association complained that the German courts, in an injunction eventually upheld by the Federal Constitutional Court in January 2009, had ordered it to desist from publicly showing the footage. The association further relied on Article 14 (prohibition of discrimination) in conjunction with Article 10, complaining

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

that it had been discriminated against in comparison with the journalist, who had merely been prohibited from disseminating specific films, but had been allowed to continue the publication of the footage in other contexts.

**No violation of Article 10**

**No violation of Article 14 taken in conjunction with Article 10**

### Lillo-Stenberg and Sæther v. Norway (no. 13258/09)

The applicants, Lars Lillo-Stenberg and Andrine Sæther, are Norwegian nationals who were born in 1962 and 1964 respectively and live in Oslo. The case concerned a well-known musician and actress in Norway who complained about press invasion of their privacy during their wedding on 20 August 2005. The wedding took place outdoors on an islet in the Oslo fjord accessible to the public. Without the couple's consent, the weekly magazine *Se og Hør* subsequently published a two-page article about the wedding accompanied by six photographs. They showed the bride, her father and bridesmaids arriving at the islet in a small rowing boat, the bride being brought to the groom by her father and the bride and groom returning to the mainland on foot by crossing the lake on stepping stones. The couple brought compensation proceedings against the magazine and won before the first two instances. However, on 2 September 2008 the Supreme Court found against the couple. It considered that they had married in a place which was accessible to the public and that the article was neither offensive nor negative. Relying on Article 8 (right to respect for private and family life), the applicants complained that their right to respect for private life had been breached by the Supreme Court's judgment of 2 September 2008.

**No violation of Article 8**

### Abdulayeva v. Russia (no. 38552/05), Kushtova and Others v. Russia (no. 21885/07), Arkhestov and Others v. Russia (no. 22089/07) and Zalov and Khakulova v. Russia (no. 7988/09)

All four cases concerned the Russian authorities' refusal to hand over to their relatives the bodies of presumed terrorists, who were killed in Russia's North Caucasus region. The cases *Arkhestov and Others v. Russia* and *Zalov and Khakulova v. Russia* also concerned the conditions in which the bodies of the applicants' deceased relatives were stored during the identification process.

The applicant in the first case, Tamara Abdulayeva, is a Russian national who was born in 1951 and lives in the village of Goyty of the Urus-Martan District of the Chechen Republic (Russia). She is the mother of Sultan Shotovich Vagapov, who was killed during a military operation in the Itum-Kalinskiy District of Chechnya in January 2005. The authorities informed Ms Abdulayeva of her son's death, showing her a copy of his identity card and a photo of a dead body, and told her that he was a rebel whose body would be kept at a military base. Her subsequent requests to see the body and to have it returned to her were refused by the authorities, relying on the Russian legislation on the fight against terrorism.

The applicants in the case *Kushtova and Others v. Russia* are seven Russian nationals who live in the village of Troitskaya, the Republic of Ingushetiya (Russia). They are the mother and the siblings of Isa Kushtov, who died in a military operation carried out by the Russian Federal Security Service (FSB) on 10 July 2006 in the village of Ekazhevo in the Nazran District of the Ingushetia Republic. According to FSB statements, several "guerilla fighters" were killed during the operation, among them Isa Kushtov. Four of the applicants, who went to the Nazran morgue on the following day, identified his body, but his mother's request to have her son's body returned to her for burial in accordance with the traditions of her family members, who are practicing Muslims, was refused.

The seven applicants in the case *Arkhestov and Others v. Russia* and one of the two applicants in the case *Zalov and Khakulova v. Russia* live in the Republic of Kabardino-Balkariya and the second applicant in the latter case lives in the Stavropol Region (both in Russia). All applicants are Russian nationals and relatives of insurgents who were killed in October 2005 during an attack on law-enforcement agencies in Nalchik, the Republic of Kabardino-Balkariya, and the ensuing fight between Government forces and the insurgents. The applicants requested various officials, including the prosecutors in a criminal investigation that had been opened into the attack, to return their relatives' bodies to them for burial, but their requests either remained unanswered or were eventually refused. The bodies of most of the people killed during the attack and the fights were cremated in June 2006.

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants in the cases *Arkhestov and Others v. Russia* and *Zalov and Khakulova v. Russia* complained about the conditions in which the bodies of their deceased relatives had been stored for identification in the town morgue. They stated in particular that the bodies had been chaotically piled on top of one another. Five of the applicants in the case *Arkhestov and Others v. Russia* also complained that they had not been able to adequately participate in the identification process.

Relying in particular on Article 8 (right to respect for private and family life), the applicants in all four cases complained about the authorities' refusal to hand over the bodies of their deceased relatives. All applicants further relied on Article 13 (right to an effective remedy) in conjunction with Article 8, complaining that they had not had an effective remedy in respect of that decision.

**No violation of Article 3** – in the cases of *Arkhestov and Others* and *Zalov and Khakulova*

**Violation of Article 8** – in all four cases

**Violation of Article 13 in conjunction with Article 8** – in all four cases

**Just satisfaction:** In all four cases, the Court dismissed the applicants' claim for just satisfaction in respect of non-pecuniary damage. As regards costs and expenses, it awarded:

- EUR 6,289 to the applicant in the case of *Abdulayeva*;
- EUR 7,690 to the applicants jointly in the case of *Kushtova and Others*;
- EUR 8,018 to the applicants jointly in the case of *Arkhestov and Others*; and
- EUR 5,675 to the applicants jointly in the case of *Zalov and Khakulova*.

**Akhmatov and others v. Russia** (nos. 38828/10, 2543/11, 2650/11, 2685/11, 7409/11, 14321/11 and 26277/11)

The applicants are 27 Russian nationals who live in various districts of the Chechen Republic (Russia). The case concerned seven alleged abductions in Chechnya between 2001 and 2005. The applicants are close relatives – wives, children, parents, sisters or brothers – of 14 men who disappeared in various districts of the Chechen Republic after allegedly being abducted from their homes, most of them at night during curfew hours, by groups of armed men. The applicants believe that the abductors were Russian federal servicemen. Criminal investigations were opened in all seven cases. They were subsequently suspended on several occasions and remain pending without having established who was responsible for the abductions or where the applicants' missing relatives had gone. Relying on Article 2 (right to life), the applicants complained that their relatives had disappeared after having been detained by State officials and that the authorities' ensuing investigations had been ineffective. The applicants further complained of a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 5 (right to liberty and security), on account of the mental suffering caused to them by the disappearance and unlawful detention of their relatives. Lastly, the applicants complained that they had not had any effective remedy at national level in respect of their complaints, in breach of Article 13 (right to an effective remedy).

**Violation of Article 2** (right to life) – in respect of the applicants’ 14 relatives

**Violation of Article 2** (procedure) – in respect of the failure to investigate effectively the disappearance of the applicants’ relatives

**Violation of Article 3** – in respect of the applicants, on account of their relatives’ disappearance and the authorities’ response to their suffering

**Violation of Article 5** – in respect of the applicants’ relatives on account of their unlawful detention

**Violation of Article 13 in conjunction with Articles 2 and 3**

**Just satisfaction:** The Court awarded a total amount of EUR 82,000 (application no. 2543/11) and a total amount of EUR 46,000 (no. 2650/11) in respect of pecuniary damage, EUR 800,000 (total of the seven applications) in respect of non-pecuniary damage, and EUR 20,150 (total of the seven applications) in respect of costs and expenses.

Just satisfaction

### Pelipenko v. Russia (no. 69037/10)

The applicants, Svetlana and Aleksandr Pelipenko, mother and son, are Russian nationals who were born in 1963 and 1985 respectively and live in the town of Anapa, Krasnodar Region (Russia). Ms Pelipenko has worked at a former State-owned seaside health resort in Anapa since 1989. The case concerned their eviction in 2010 from two rooms in a former administrative building for staff members of the resort – where they had resided for 20 years – following the transfer of the property into private hands. They complained in particular about the non-enforcement of a final judgment in their favour of November 2001, in which the courts had dismissed the action seeking their eviction, finding it established that the rooms had been their permanent place of residence.

In its [principal judgment](#) of 2 October 2012 the Court found violations of Article 6 § 1 (right to a fair trial) and Article 8 (right to respect for private and family life and home). Today’s judgment concerned the question of just satisfaction (Article 41 of the Convention).

**Just satisfaction:** EUR 13,000 to the applicants jointly (pecuniary damage), EUR 10,000 jointly (non-pecuniary damage) and EUR 1,700 jointly (costs and expenses)

### Shchiborshch and Kuzmina v. Russia (no. 5269/08)

The applicants, Viktor Shchiborshch and Valentina Kuzmina, are Russian nationals who were born in 1939 and 1944 respectively and live in Dubna, the Moscow Region. They are the parents of Kirill Shchiborshch, who suffered from a psychiatric disorder and who died in hospital on 7 July 2006, aged 37, after having been severely wounded when resisting the police who tried with force to take him to a psychiatric hospital. His father had obtained a referral for his son’s in-patient treatment and had asked the police for assistance with his placement in the hospital as he was in a delirious state. On the day of Kirill Shchiborshch’s death the authorities ordered a forensic examination of his body and a criminal investigation was opened on 3 August 2006. It was closed in April 2010 on the grounds that there was insufficient evidence to hold the police responsible for his death. Relying in particular on Article 2 (right to life), the applicants complained that the police had been responsible for their son’s death, in particular because they had not been trained for the situation, and that the investigation into the death had been ineffective. They further complained under Article 13 (right to an effective remedy) that they had not had any effective remedy in respect of their complaints.

**Violation of Article 2** – on account of the lack of planning and control of the involuntary hospitalisation operation in respect of Kirill Shchiborshch

**Violation of Article 2** – on account of the failure to conduct an effective investigation into the events that led to Kirill Shchiborshch's death

**Violation of Article 13**

**Just satisfaction:** EUR 2,550 to the applicants jointly (pecuniary damage), EUR 45,000 jointly (non-pecuniary damage) and EUR 1,235 jointly (costs and expenses)

**F.G. v. Sweden (no. 43611/11)**

The applicant, F.G., is an Iranian national who was born in 1962 and is currently in Sweden. He applied for asylum and a residence permit in Sweden in November 2009, stating in particular that he had been active in the opposition movement, that he had been arrested on two occasions, and that he had converted to Christianity after coming to Sweden. He therefore risked persecution if returning to Iran. He also submitted a summons to the Revolutionary Court in Iran ordering him to present himself at Evin prison in Teheran in November 2009. The Migration Board rejected his request in a decision eventually upheld by the migration courts in June 2011. The courts found in particular that the summons to the Revolutionary Court could not in itself substantiate a need for protection, and they doubted that F.G.'s political activities had been of such a nature and extent to lead to a risk of persecution. F.G.'s request to stay the enforcement of his expulsion to Iran was also rejected by the authorities in a decision eventually upheld in November 2011. Relying on Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment or punishment), F.G. complained that if expelled to Iran he would be at a risk of being punished or sentenced to death.

**No violation of Article 2 or Article 3** – in the event of the applicant's being expelled to Iran

**Interim measure** (Rule 39 of the Rules of Court) – not to expel the applicant to Iran – still in force until judgment becomes final or until further order.

**Valeriy Fuklev v. Ukraine (no. 6318/03)**

The applicant, Valeriy Fuklev, is a Ukrainian national who was born in 1951 and lives in Nova Kakhovka (Ukraine). His wife died from peritonitis and sepsis on 18 July 2001, nine days after a gynecological operation to which she had given her consent. A criminal investigation was opened in September 2001. It was eventually discontinued in October 2007 on the grounds that no direct link could be established between possible shortcomings in the treatment she had received and her death. Relying in particular on Article 2 (right to life), Mr Fuklev complained that the investigation into his wife's death had been ineffective.

**Violation of Article 2** (procedure) – on account of the ineffective investigation into the applicant's wife's death

**Just satisfaction:** EUR 6,000 (non-pecuniary damage) and EUR 240 (costs and expenses)

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