



## Judgments of 28 April 2015

The European Court of Human Rights has today notified in writing 13 judgments<sup>1</sup>:

11 Chamber judgments are summarised below; for one other, in the case of *Milić and Nikezić v. Montenegro* (applications nos. 54999/10 and 10609/11), a separate press release has been issued; one Committee judgment, which concerns issues which have already been submitted to the Court, can be consulted on [Hudoc](#) and does not appear in this press release.

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

### Delijorgji v. Albania (application no. 6858/11)

The applicant, Mihal Delijorgji, is an Albanian national who was born in 1966 and lives in Tirana. His case concerned the length of his detention “pending trial” and the time it took for the authorities to examine his first request for release.

Mr Delijorgji was the administrator for a private commercial company which was carrying out a demilitarisation process in March 2008 when a massive explosion in one of its facilities killed 26 people and injured 265 others. Criminal proceedings began against Mr Delijorgji and 28 other people for murder and breach of the rules on explosives.

Two days after the explosion Mr Delijorgji was remanded in custody. In March 2009 the case against Mr Delijorgji and his co-accused was sent to the Supreme Court for examination because one of the co-accused was an MP as well as a Cabinet Minister. In June 2009 the case was registered with the Tirana District Court. In July 2010 Mr Delijorgji requested his release, arguing that the 12-month time limit for detention “pending trial” had expired. His request was rejected on the basis that the 12-month period had only commenced when the case was registered with the District Court (that is to say in June 2009, not in March 2009 when the case was sent to the Supreme Court), and that a period of over 8 months, when the case had been stayed, did not count towards the 12-month total. This decision was upheld on appeal but quashed by the Supreme Court. Whilst this procedure was still underway, Mr Delijorgji’s lawyer introduced a second request for his release; this was quickly rejected by the District Court which argued that the Supreme Court’s findings on his earlier appeal were only binding on the bench hearing that particular case and had no bearing on his second release request.

In February 2011 Mr Delijorgji’s lawyer made a third request for release, this time it was successful and Mr Delijorgji was released and placed under house arrest. Mr Delijorgji was convicted in March 2012, and released in March 2013 as the time spent in pre-trial detention both in prison and under house arrest was deducted from his sentence.

Relying on Article 5 § 1 (c) (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) of the European Convention on Human Rights, Mr Delijorgji

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

complained that his detention “pending trial” from mid-2010 onwards had not been in accordance with the law and that his first request for release had not been examined sufficiently speedily.

**Violation of Article 5 § 1** – as regards Mr Delijorgji’s detention from 24 November 2010 to 12 March 2012

**Violation of Article 5 § 4**

**Just satisfaction:** 15,600 euros (EUR) in respect of non-pecuniary damage

### Doroșeva v. the Republic of Moldova (no. 39553/12)

The applicant, Ecaterina Doroșeva, is a Moldovan national who was born in 1978 and lives in Chisinau. The case concerned her allegation that she had been ill-treated by the police on being arrested for a drug-related offence.

On 11 November 2009 Ms Doroșeva was arrested by several police officers on the street on suspicion of possession of drugs. She was taken to the police station where she was held until the next morning. She alleges that she was ill-treated by the police officers before being taken to the police station and that this was confirmed upon her release when she was examined by several doctors who found that she had numerous bruises to her face, arms and hips, concussion and a broken nose. She lodged a criminal complaint with the prosecuting authorities in January 2010 which was subsequently dismissed on two occasions, first because the prosecutors thought that her injuries might have been the result of her falling over and second due to discrepancies in dates of her medical records. The second and last decision refusing to initiate criminal proceedings was upheld by an investigating judge in November 2011.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Ms Doroșeva complained that she had been ill-treated in police custody and that the authorities had failed to properly investigate her complaint or explain the origin of her injuries as recorded in the medical reports.

**Violation of Article 3** (ill-treatment)

**Violation of Article 3** (investigation)

**Just satisfaction:** EUR 12,000 (non-pecuniary damage)

### I.P. v. the Republic of Moldova (no. 33708/12)

The applicant, Ms I.P., is a Moldovan national who was born in 1987 and lives in Chisinau. The case concerned her complaint that the authorities had failed to properly investigate her allegation of rape.

Ms I.P. alleged that she had been raped by O.P. whom she had been dating for over one year. According to her, O.P., who was jealous and violent, was upset with her on the evening of 10 May 2010 because he had not been able to contact her. He had therefore waited for her outside her home and, on her arrival, had assaulted her, forced her into his car and driven her to his home where he had sequestered her all night, violently assaulting her, raping her and sodomising her against her will. He let her go in the morning and called a taxi for her.

She immediately lodged a criminal complaint against O.P. and underwent a medical examination. The ensuing medical reports found that she had multiple bruising on her body and traces of semen in her vagina. O.P. was also examined and scratches on his neck characteristic of those inflicted by rape victims were recorded.

In O.P.’s version of events, he admitted having slapped I.P. but denied having used any other violence against her as well as having raped her, first insisting that they had both consented to having sexual intercourse and then completely denying that they had had any intercourse at all.

I.P.'s complaint was dismissed by the prosecuting authorities in August 2010 and then in April 2011, essentially on the grounds that she used to date O.P. and, having gone willingly to his house on the night of the incident, could have resisted him if she had really wanted to. In the last decision dismissing her complaint the prosecutor decided that O.P. had committed a minor offence of assault but the time-limit for bringing such proceedings had expired. I.P.'s appeals to the hierarchically superior prosecutor and then to an investigating judge were rejected in August and November 2011, respectively.

I.P. alleged that the Moldovan authorities had failed to investigate her allegations of rape effectively and that she had had no effective criminal-law or civil remedies available for her allegation of rape or for the ensuing inadequacy of the investigation. She relied in particular on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy).

**Violation of Article 3** (investigation)

**Violation of Article 13 in conjunction with Article 3** – in so far as the complaint about the lack of civil remedies was concerned

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

### Cojan v. Romania (no. 54539/12)

The applicant, Vasile Cojan, is a Romanian national who was born in 1954 and is currently serving an 18-year prison sentence in Giurgiu Prison (Romania) following his conviction in May 2011 of drug-related crimes.

Mr Cojan's case concerned his complaint about the conditions of his pre-trial detention in Bucharest police detention facilities from May to November 2010 and then in Rahova Prison until August 2012.

Relying on Article 3 (prohibition of inhuman or degrading treatment), he complained in particular about overcrowding, poor hygiene and food as well as lack of natural light and access to fresh air, which had resulted in him becoming ill and depressed.

**Violation of Article 3** (degrading treatment)

**Just satisfaction:** EUR 5,250 (non-pecuniary damage)

### Ferrari v. Romania (no. 1714/10)

The applicant, Adrian Rodolfo Ferrari, is an Argentinian national who was born in 1971 and lives in Buenos Aires. The case concerned his complaint about the length of proceedings before the Romanian courts for the return of his child to Argentina.

Mr Ferrari had a child with a Romanian and Argentinian national in August 2005. The family's permanent residence was in Argentina, but they travelled frequently on account of Mr Ferrari's work assignments as a military pilot. After having lived together in Cyprus for several months in 2006, Mr Ferrari agreed with his wife that she would go to Romania for a few months and return to Buenos Aires at the end of his contract in Cyprus in October 2007. However, his wife informed him in November 2007 that she would not be returning with the child to Argentina. She subsequently filed for divorce and custody of the child before the Romanian courts. The Romanian courts granted the divorce in April 2008 but decided not to rule on the custody issue as, in the meantime, Mr Ferrari had lodged a request for the return of his child under the Hague Convention on the Civil Aspects of International Child Abduction and those proceedings were still pending. The Hague proceedings before the Romanian courts lasted from March 2008 to May 2009 when the courts issued their final ruling on the case, finding that the child had not been wrongfully brought to Romania as both parents had consented to the trip and that the father was unable to take proper care of the child due to his repeated assignments abroad for his job. In September 2011 the Romanian courts granted

custody of the child to the mother and awarded Mr Ferrari visiting rights. Mr Ferrari has had contact with his child in Romania on three occasions since late 2009.

Relying in particular on Article 8 (right to respect for private and family life), Mr Ferrari complained that the length of the proceedings – 13 months – before the Romanian courts concerning the return of his child had meant that the family ties between him and his child had been broken.

#### **Violation of Article 8**

**Just satisfaction:** EUR 7,500 (non-pecuniary damage)

#### **Mateiuc v. Romania (no. 48968/08)\***

The applicant, Ilie Mateiuc, is a Romanian national who was born in 1956 and lives in Teslui (Romania).

The case concerned the allegation of a lack of fairness in criminal proceedings on corruption charges.

Mr Mateiuc, an inspector with the Department of Public Finance of Olt, was responsible for verifying the accounting and financial documents of commercial companies and had the authority to impose administrative or criminal sanctions. In July 2006 Mr Mateiuc and one of his colleagues were interviewed by police officers from the local inspectorate without any lawyer being present. Mr Mateiuc's colleague confessed to having, together with Mr Mateiuc, accepted sums of money from company directors, but Mr Mateiuc denied this.

In the first set of criminal proceedings Mr Mateiuc and his colleague appeared before the County Court. Mr Mateiuc denied the charges. His colleague also denied them, explaining that he had made his first statements to the police under pressure and without a lawyer. The court nevertheless relied on those statements to the police and on witness testimony in finding that the charges were made out, but acquitted Mr Mateiuc on the more serious charge and ordered him to pay an administrative fine.

On an appeal by the public prosecutor, the Craiova Court of Appeal sentenced Mr Mateiuc to one year's imprisonment. His appeal on points of law was dismissed by the High Court of Cassation and Justice.

In two further sets of criminal proceedings, Mr Mateiuc was acquitted on the ground that his colleague had not been assisted by a lawyer when he made his statements incriminating Mr Mateiuc.

Relying on Article 6 § 1 (right to a fair trial), the applicant complained of a lack of fairness in the first set of criminal proceedings.

#### **No violation of Article 6 § 1**

#### **Maslák v. Slovakia (no. 15259/11)**

#### **Šablić v. Slovakia (no. 78129/11)**

Both cases concerned complaints about the excessive length of time to take a decision on requests for release from pre-trial detention.

The applicant in the first case, Miroslav Maslák, is a Slovak national who was born in 1979 and lives in Pružina (Slovakia). He was arrested in September 2008 on charges of a number of violent offences, mainly involving organised crime, and remanded in custody. His complaint concerned his request for release of May 2009, which had first been dismissed in July 2009 and then on appeal in August 2009. He lodged a constitutional complaint in November 2009 complaining, in particular, about the length of the proceedings to decide on his request for release; his complaint was

dismissed in June 2010 as manifestly ill-founded. In the meantime in April 2010, Mr Maslák was released; the criminal proceedings against him are apparently still pending.

The applicant, Nikolaj Šablji, is a Ukrainian national who was born in 1977. He was arrested in Slovakia in January 2008 on a murder charge and remanded in custody. His complaint concerns his request for release of September 2010, which was ultimately dismissed in January 2011. He lodged a constitutional complaint in March 2011, complaining about the length of the proceedings to decide on his request for release; in June 2011 the Constitutional Court acknowledged that there had been a breach of his right under the European Convention to have the lawfulness of his detention decided speedily by a court (Article 5 § 4) and, awarding legal costs, rejected the remainder of his compensation claim. Mr Šablji was acquitted in July 2011 and his acquittal was upheld on appeal in April 2013.

Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), both applicants complained about the length of the proceedings – 98 days and 154 days, respectively – to decide on their requests for release. Also relying on Article 5 § 5 (right to liberty and security / right to compensation), they complained that they had been denied an enforceable right to compensation in respect of the excessive length of the proceedings for their release.

**Violation of Article 5 § 4** – in both cases

**Violation of Article 5 § 5** – in the *Maslák* case

**Just satisfaction:** EUR 5,000 to Mr Maslák and EUR 2,380 to Mr Šablji (non-pecuniary damage), and EUR 1,500 to Mr Maslák and EUR 392.73 to Mr Šablji (costs and expenses)

### Baştürk v. Turkey (no. 49742/09)\*

The applicant, Ramazan Baştürk, is a Turkish national who was born in 1939 and lives in Bursa (Turkey).

The case concerned the termination of criminal proceedings for acts of violence during a fight because the prosecution was time-barred.

On 7 July 1999 Mr Baştürk received a head injury during a fight when he was trying to help his brother. He also allegedly injured another person.

On 15 July 1999 the public prosecutor brought criminal proceedings against four individuals, including Mr Baştürk, for causing physical injury. Two individuals were convicted for injuring Mr Baştürk and given a suspended prison sentence. Mr Baştürk was convicted of wounding and given a suspended fine. The Court of Cassation upheld the judgment against Mr Baştürk but quashed those against the other two, who were subsequently sentenced again to prison.

On 3 October 2005, following the entry into force of the new Criminal Code, the Court of Cassation quashed the judgment again with a view to re-examination of the offences. A judgment by the lower court on 14 December 2006 providing for prison sentences was again quashed by the Court of Cassation on the ground that the prosecution had become time-barred.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicant notably complained that the criminal proceedings brought against the individuals who had ill-treated him had been terminated as time-barred.

**Violation of Article 3** (lack of diligence shown in judicial proceedings)

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

## Galip Dođru v. Turkey (no. 36001/06)\*

The applicant, Mr Galip Dođru, is a Turkish national who was born in 1983.

The case concerned an allegation of ill-treatment by the police during his arrest and an excessive length of detention.

In the evening of 15 February 2003, Mr Dođru was arrested by police officers after he threw a Molotov cocktail at a bank. In his flight, he entered a building site, where he stumbled and fell down some stairs. The police arrested him and used force to control him when he put up resistance. Mr Dođru was taken to hospital.

On 17 February 2003 Mr Dođru gave a statement to the police without being assisted by a lawyer. He acknowledged that he had thrown the Molotov cocktail with a friend and had taken part in three demonstrations supporting the PKK (an illegal armed organisation). On 19 February 2003 the State Security Court remanded him in custody. Before the court Mr Dođru retracted the statements he had given to the police.

He was charged with membership of an illegal organisation and use of explosives. On 26 May 2006 Mr Dođru was sentenced to 10 years and 5 months in prison.

Mr Dođru lodged an appeal on points of law. The Court of Cassation quashed the first-instance judgment for a procedural defect. On 31 October 2007 the Assize Court reiterated the position it had adopted in its first judgment and the Court of Cassation upheld the new judgment.

In parallel, in the days following Mr Dođru's arrest, the public prosecutor at the State Security Court opened an investigation following the applicant's allegations of ill-treatment. On 18 December 2003, the criminal court acquitted the police officers in question.

Relying in particular on Article 5 § 3 (right to liberty and security), the applicant complained about the length of his pre-trial detention, which he alleged had been excessive. Relying on Article 6 § 1 (right to a fair trial) and Article 6 § 3 (c) (right to legal assistance), he complained that he had been convicted on the basis of his statement in police custody, which, according to him, had been taken following ill-treatment and in the absence of a lawyer.

### **Violation of Article 5 § 3**

**Violation of Article 6 § 1** (length of criminal proceedings)

**Violation of Article 6 § 3 c) taken together with Article 6 § 1**

**Just satisfaction:** EUR 6,500 (non-pecuniary damage) and EUR 2,250 (costs and expenses)

## Sultan Dölek and Others v. Turkey v. Turkey (no. 34902/10)

The applicants, Sultan Dölek, Mahmut Dölek, Ahmet Cengiz Dölek, Arife Dölek, Güzide Dölek, Mahide Dölek, and Mehmet Dölek are Turkish nationals who were born in 1930, 1962, 1965, 1956, 1969, 1973, and 1959 respectively and live in Mersin (Turkey).

The case concerned the investigation into the death of their 55-year-old son and brother, Mustafa Döleksoy, who was found dead in his summer house near Erdemli in southern Turkey in August 2007.

Mr Döleksoy's body was discovered on 25 August 2007 by the caretaker and security guard of the summer complex where he was staying as they had been informed by neighbours of a strong smell coming from his house. A doctor called to the house, estimating that the death had occurred four to five days previously, concluded that Mr Döleksoy had died from a head injury as a result of a fall. The gendarmes and the Erdemli prosecutor were also called to the scene the same day and certain items of evidence were collected, notably a handful of hair found in Mr Döleksoy's hand. In November 2007 forensic experts, basing their conclusions on a post mortem and a toxicological report,

concluded that he had not been poisoned and that it was impossible to establish the exact cause of his death on account of the advanced state of decomposition of the body but that, in any case, there was no medical evidence to show any foul play. Those conclusions were also based on an examination of the hair found in Mr Döleksoy's hand and the fact that it had not responded to DNA analysis. A subsequent examination of the hair revealed that it was human hair and that it had strong similarities to samples taken of Mr Döleksoy's hair. Taking into account these medical reports, in December 2008 the Erdemli Public Prosecutor decided to close the investigation into the death. Sultan Dölek's objection to this decision was subsequently rejected and another decision of non-prosecution taken in October 2009.

Mustafa Döleksoy's parents, believing that their son had died in suspicious circumstances, informed the authorities that their son had received threatening phone calls shortly before his death. Throughout the investigation, they repeatedly urged the authorities, without success, to: question neighbours in the summer house complex or other witnesses suggested by them, look for fingerprints in the house and examine both the records of the mobile phone found on their son's body as well as his clothes. They were particularly dissatisfied with the forensic examination of the hair found in their son's hand and the authorities' failure to clarify why it had not responded to DNA analysis, and requested hair samples in order to carry out an examination privately at a university; the Public Prosecutor refused however permission for the hair samples to be handed over.

Relying in particular on Article 2 (right to life), the applicants complained that very few steps had been taken by the national authorities to clarify the circumstances of their relative's death and that those steps which had been taken had not been adequate enough to establish whether their relative had been killed intentionally or not. They challenged in particular the credibility of the forensic reports used to close the investigation with a decision of non-prosecution.

#### **Violation of Article 2** (investigation)

**Just satisfaction:** EUR 20,000 to the applicants jointly (non-pecuniary damage), and EUR 1,260 jointly (costs and expenses)

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