



Judgments of 1 March 2016

The European Court of Human Rights has today notified in writing 12 judgments¹:

eight Chamber judgments are listed below; for two others, in the cases of *K.J. v. Poland* (application no. 30813/14) and *Arlewin v. Sweden* (no. 22302/10), separate press releases have been issued.

two 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 are indicated with an asterisk (*).

Arbačiauskienė v. Lithuania (application no. 2971/08)

The applicant, Marija Arbačiauskienė, is a Lithuanian national who was born in 1957 and lives in Buivydiškės, Vilnius Region. The case concerned the failure to enforce a judgment confirming her right to buy a plot of land from the State.

In March 1995 in a decision by the local administrative authorities Ms Arbačiauskienė obtained the right to buy two hectares of farming land in the village of Zujūnai (in the area of Buivydiškės). Land reform in the area began in 2000, and Ms Arbačiauskienė repeatedly petitioned the authorities, requesting to be included in the reform, without success. Ultimately, in May 2007 the Supreme Administrative Court recognised that she had the right to buy land from the State, referring to the decision of 1995 and ordering the county administration to allocate her a specific plot of land which she could then buy from the State. Despite attempts by the bailiff, and several other court decisions in her favour, this judgment has still not been fully enforced.

In 2015 Ms Arbačiauskienė was eventually allowed to buy some land, although not the full amount to which she was entitled. She is also required to pay the price corresponding to the market value of the land (26,740 euros (EUR)) and not the nominal price (EUR 627).

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy) of the European Convention on Human Rights, Ms Arbačiauskienė complained about the authorities' failure to enforce the Supreme Administrative Court's judgment of May 2007 confirming her right to acquire two hectares of land, alleging also that she had not had an effective remedy against that lengthy non-enforcement.

Violation of Article 6 § 1

Violation of Article 13

Just satisfaction: The Court held that Lithuania was to enforce the judgment of 5 May 2007 in favour of Ms Arbačiauskienė, in full satisfaction of her claim of pecuniary damage. It further awarded her 7,000 euros (EUR) in respect of non-pecuniary damage.

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

Mihu v. Romania (no. 36903/13)

The applicant, Petre Mihu, is a Romanian national, who was born in 1938 and lives in Sibiu (Romania). The case concerned Mr Mihu's allegation that his 42-year-old son died as a result of medical negligence.

On 21 August 2005 Mr Mihu's son was taken to the emergency unit of a public hospital with stomach bleeding. He died in the hospital the next day as the bleeding could not be stopped. According to the autopsy nothing could have been done to save his life: the cause of death had been a rupture of varices in the oesophagus and an ulcer in a patient who had had already been suffering from hepatic cirrhosis.

Mr Mihu and his wife lodged a criminal complaint against the doctors who had treated their son, accusing the hospital of poor organisation, including a lack of blood and other drugs. A criminal investigation was immediately opened against two doctors who had treated their son. Statements were taken from the two doctors and forensic examinations were ordered. The investigation, reopened on three occasions with referrals for additional investigation on account of a failure to clarify the facts, ended in a final decision of November 2012 which found that the two doctors had not been at fault.

Relying in particular on Article 2 (right to life) of the European Convention, Mr Mihu complained about the death of his son as a result of negligent medical care, alleging also that the ensuing investigation had been ineffective.

No violation of Article 2 (right to life)

Violation of Article 2 (investigation)

Just satisfaction: Mr Mihu did not make a claim for just satisfaction.

Popoviciu v. Romania (no. 52942/09)

The applicant, Gabriel Aurel Popoviciu, is a Romanian national who was born in 1959 and lives in Bucharest. The case concerned his complaint about having been held for almost nine hours in a waiting room at the National Anti-Corruption Prosecution Service (NAP) headquarters – where he had been called for questioning – before an order remanding him in custody had been issued.

In 2005 a businessman lodged a criminal complaint against Mr Popoviciu and the rector of a university concerning the sale of a plot of land near Bucharest. In connection with those proceedings, on 24 March 2009 at about 3 p.m. Mr Popoviciu was brought by the police to the NAP headquarters on the basis of an order to appear before the prosecution authorities to be questioned about the offences of abuse of position and bribery. Kept in a waiting room without being questioned, he was informed of the charges against him and heard by investigators at 10 p.m. At 11.30 p.m. he was remanded in custody for the next 24 hours. His remand in custody was then extended until 25 March 2009 when he was released with a prohibition on him leaving the country for 30 days. This prohibition was repeatedly extended over a period of three months, the NAP and the courts maintaining that there was a reasonable suspicion that Mr Popoviciu had committed the offence with which he had been charged and that lifting the ban would impede the proper administration of justice. The criminal proceedings against Mr Popoviciu are apparently currently still pending.

Relying on Article 5 § 1 (right to liberty and security), Mr Popoviciu alleged that he had been held for almost nine hours on the premises of the prosecuting authorities without any legal basis. Further relying on Article 2 of Protocol No. 4 (freedom of movement), he also submitted that the prohibition on him leaving the country had not been justified.

Violation of Article 5 § 1

No violation of Article 2 of Protocol No. 4

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

Andrey Lavrov v. Russia (no. 66252/14)

The applicant, Andrey Borisovich Lavrov, is a Russian national who was born in 1967 and lives in Chelyabinsk (Russia). The case concerned his complaint about inadequate medical care in detention for cancer.

Mr Lavrov was diagnosed with lymphoma in 2012. In 2013 he was convicted of fraud, robbery and theft and sent to serve his sentence in a detention facility. He was transferred in March 2014 to a prison tuberculosis hospital. In March and July 2014 two medical reports confirmed the cancer diagnosis and, given the rapid progress of the illness, concluded that he was eligible for early release. Both his applications for early release were however subsequently dismissed. At a hearing in September 2014 the courts notably found that Mr Lavrov had a tendency to reoffend and was in any case receiving adequate medical care in detention.

In October 2014 Mr Lavrov requested the European Court of Human Rights to authorise his immediate release as an interim measure under Rule 39 of its Rules of Court. The European Court granted that request and indicated to the Russian Government that he should be immediately examined by medical experts independent from the prison system to ascertain whether: he was receiving adequate treatment in detention; his state of health was compatible with detention; and his condition required that he be placed in a specialised hospital or released. On 7 November 2014 the Government responded, submitting in particular that Mr Lavrov had regularly had in-patient treatment in detention by specialists but that he had refused chemotherapy and that, although the medical reports of March and July 2014 stated that he was suffering from a condition which precluded the serving of a sentence, the Russian courts had refused to release him on health grounds.

Ultimately, on 28 November 2014 Mr Lavrov was released, the courts finding that the prison authorities were unable to provide adequate treatment for him.

Relying Article 3 (prohibition of inhuman or degrading treatment), Mr Lavrov alleged that he had not received vital chemo- and radiotherapy for his illness, submitting a certificate issued by his prison hospital and a statement made in court by the prison doctor that he had not been treated because the necessary drugs had not been available in the hospital. Further relying on Article 34 (right of individual petition), he also submitted that the Russian authorities had failed to comply with the interim measure ordering an independent medical examination of his situation.

Violation of Article 34

Violation of Article 3 (inhuman and degrading treatment)

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 1,000 (costs and expenses)

Gorbunov and Gorbachev v. Russia (nos. 43183/06 and 27412/07)

The applicants, Vasiliy Gorbunov and Aleksey Gorbachev, are Russian nationals who were born in 1971 and 1975 respectively and are serving their prison sentences in the Vologda and the Kostroma Regions (both in Russia) respectively. The case concerned their complaints about the arrangements for contact with their State-appointed lawyers in criminal proceedings against them.

Mr Gorbunov was found guilty of manslaughter in July 2006 and sentenced to nine and a half years' imprisonment. Mr Gorbachev was found guilty of murder and robbery in December 2006 and sentenced to 17 years' imprisonment.

Mr Gorbunov's conviction was upheld on appeal by the Regional Court in December 2006. He participated at the beginning of the hearing from his detention facility via a video link. According to him, he had not met with his lawyer prior to the appeal hearing on his case and, on requesting such a meeting at the beginning of the hearing, was removed from the room where the video conference equipment had been installed. The court thus went on to hear the case in his absence. The Government submitted, on the other hand, that Mr Gorbunov had had ample opportunity to communicate with his lawyer prior to the appeal hearing via video link and denied that he was removed from the appeal hearing.

Mr Gorbachev's conviction was upheld on appeal by the Supreme Court in April 2007. This judgment was subsequently quashed by way of supervisory review because he had not been provided with a lawyer during the appeal proceedings. In the second set of appeal proceedings Mr Gorbachev was appointed a lawyer to represent him and communicated with her via video link before the start of the hearing. The Supreme Court ultimately upheld the conviction in May 2011 in substance, but reduced the sentence to 16 and a half years' imprisonment.

Relying in particular on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), both applicants alleged that the appeal and supervisory review proceedings in their cases had been unfair, in particular because of the arrangements for contact with their State-appointed lawyers via a poor quality video link.

Violation of Article 6 §§ 1 and 3 (c)

Just satisfaction: EUR 1,500 each to Mr Gorbunov and Mr Gorbachev in respect of non-pecuniary damage

Kholmurodov v. Russia (no. 58923/14)*

The applicant, Abdukhafiz Kholmurodov, is an Uzbek national who was born in 1985 and lives in Moscow. The case concerned his imminent removal to Uzbekistan from Russia.

Mr Kholmurodov had been charged with a number of offences in his country of origin; in particular for having created and run the organisation "Islamic Movement of Turkestan" and for having possessed and disseminated subversive documents.

After being arrested in Russia with a forged passport, his extradition was requested by Uzbekistan and he was detained pending the final decision. Mr Kholmurodov was also charged in Russia with the attempted theft of a passport and use of forgery. On that basis he was remanded in custody, replacing his detention pending extradition. On 5 December 2013 he was found guilty as charged and was sentenced to a prison term of one year and six months.

On 18 August 2014 the office of the Russian Federal Migration Service for the region of Kostroma issued an order for Mr Kholmurodov's deportation, against which his lawyer lodged an appeal. Whilst that office then suspended the deportation proceedings, having regard to an interim measure indicated by the European Court of Human Rights, Mr Kholmurodov's appeal against the order was ultimately dismissed on 12 December 2014. His lawyer again appealed, but the appeal was dismissed by Kostroma Regional Court.

In the meantime Mr Kholmurodov had lodged an application for "temporary asylum", relying on the risk of being subjected to inhuman or degrading treatment in the event of being returned to Uzbekistan. His application was rejected by the Federal Migration Service's office for Kostroma region, but the Migration Service's central office annulled that rejection and granted him temporary asylum until 27 April 2016.

In parallel, Mr Kholmurodov was again placed in detention pending extradition, for two months, by a decision of the deputy public prosecutor for Ponazirevo District. His lawyer's appeal against the

decision was rejected. On 28 October 2014 the Galitch District Court of Kostroma Region extended Mr Kholmurodov's detention until 28 February 2015. He was released on 2 March 2015.

Relying in particular on Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention, Mr Kholmurodov complained that a return to his country of origin would expose him to treatment in breach of the Convention. Under Article 13 (right to an effective remedy) taken together with Article 3, he argued that his complaints about a risk of ill-treatment had not been duly examined by the domestic authorities. Relying in substance on Article 5 § 1 (right to liberty and security), he also complained that his detention pending extradition, from 29 August to 28 October 2014, had not been lawful.

Violation of Article 3 – in the event of Mr Kholmurodov's removal to Uzbekistan

Violation of Article 13 taken together with Article 3

Violation of Article 5 § 1

Interim measure (Rule 39 of the Rules of Court) – not to remove Mr Kholmurodov to Uzbekistan – still in force until judgment becomes final or until further order.

Just satisfaction: EUR 7,000 (non-pecuniary damage) and EUR 7,500 (costs and expenses)

Milenković v. Serbia (no. 50124/13)

The applicant, Momčilo Milenković, is a Serbian national who was born in 1969 and lives in Leskovac (Serbia). The case concerned his complaint that he had been tried and punished twice for the same offence following his involvement in a fight.

On 17 October 2006, in the neighbourhood of Leskovac, Mr Milenković was involved in a fight with a man who had insulted his children. A few weeks later, he was convicted in misdemeanour proceedings for punching the man and injuring him. He was ordered to pay a fine. Criminal proceedings were also brought against him and in April 2011 he was found guilty of punching the man in the head and causing him grievous bodily harm. He was sentenced to three months' imprisonment. Mr Milenković appealed, arguing that he had already been convicted for a misdemeanour for the same incident. His conviction was however upheld on appeal, the courts finding that the descriptions of the acts in each set of proceedings differed: in the misdemeanour proceedings he had been found guilty of breaching public order and peace, whereas in the criminal proceedings he had been convicted of inflicting bodily harm. Mr Milenković was eventually amnestied in the criminal proceedings in November 2012. His constitutional appeal was dismissed as ill-founded in May 2013.

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice), Mr Milenković complained that, after already having been convicted and sentenced in misdemeanour proceedings, he had been convicted and sentenced in criminal proceedings for the same facts.

Violation of Article 4 of Protocol No. 7

Just satisfaction: EUR 1,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

Perak v. Slovenia (no. 37903/09)

The applicant, Marko Perak, is a Slovenian national who was born in 1963 and lives in Mežica (Slovenia). The case concerned his complaint that he had not been able to participate in proceedings before the Supreme Court on a defamation claim.

In August 2003 Mr Perak brought criminal charges against A.Š. for defamation, undertaking the proceedings as a private prosecutor. The first- and second-instance courts upheld Mr Perak's claim. Subsequently, however, A.Š. lodged before the Supreme Court a request for the protection of legality (an extraordinary legal remedy for challenging the legality of final decisions), alleging that

Mr Perak's criminal action had been brought out of time. Mr Perak's representative was notified of the request for protection of legality, but the Supreme Court failed to forward an actual copy of the request. The Supreme Court upheld A.Š.'s request in August 2008, dismissing Mr Perak's action as lodged out of time. Mr Perak's representative found out about this decision in September 2008 when he requested the relevant documentation about the request for protection of legality. The Supreme Court's judgment was eventually served on Mr Perak's representative on 22 September 2008. Mr Perak lodged a constitutional complaint, alleging that he had not been given the opportunity to participate in the proceedings before the Supreme Court. This complaint was rejected in January 2009.

Relying on Article 6 § 1 (right to a fair hearing), Mr Perak alleged in particular that he had not been given a fair hearing as he had been excluded from the proceedings before the Supreme Court.

Violation of Article 6 § 1

Just satisfaction: EUR 2,500 (non-pecuniary damage) and EUR 3,645.38 (costs and expenses)

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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.