



Judgments of 5 July 2016

The European Court of Human Rights has today notified in writing 15 judgments¹.

11 Chamber judgments are listed below; for one other, in the case of *A.M. v. the Netherlands* (application no. 29094/09), a separate press release has been issued.

three 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 ().*

Bandur v. Hungary (application no. 50130/12)

The applicant, János Bandur, is a Hungarian national who was born in 1963 and lives in Budaörs (Hungary). The case concerned his pre-trial detention.

In the context of criminal proceedings against several other persons on suspicion of a number of offences an arrest warrant was issued in respect of Mr Bandur in June 2012, since he was unreachable at his permanent address. On 8 June 2012 he voluntarily appeared at a police station, where he was questioned as a suspect on charges of aggravated fraud. He was placed in police custody on the same day, and on the following day the competent district court ordered his detention on remand for one month, finding that there was a risk he would abscond, obstruct the investigations or commit further offences. Mr Bandur's appeal – arguing that there was no such risk, as demonstrated, in particular, by the fact that he had voluntarily cooperated with the police – was dismissed, as was his appeal against the extension of his detention for another two months. He was eventually released on 7 September 2012. In June 2015 he was acquitted of the charges against him.

According to Mr Bandur's submissions, the conditions of his pre-trial detention were inhuman and degrading, in particular because: the cells where he was kept were too small for the number of inmates; there was no fresh air; and he was allowed to leave the cell only for one hour of exercise every day.

Mr Bandur complained that his detention conditions had been in violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights and that he had not had an effective domestic remedy in that respect, in breach of Article 13 (right to an effective remedy). He further alleged violations of Article 5 §§ 1 (c) and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), complaining: that his arrest had been unlawful, since there had been no reasonable suspicion against him; that the authorities had not justified his pre-trial detention on any relevant ground; and that there had been a number of defects in the proceedings concerning his detention. As regards the latter complaint, he alleged in particular that neither he nor his counsel had received the application for his pre-trial detention or the application to extend the measure in time.

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

Violation of Article 3 (degrading treatment)

No violation of Article 5 § 1

Violation of Article 5 § 3

Violation of Article 5 § 4

Violation of Article 13 read in conjunction with Article 3

Just satisfaction: 6,500 euros (EUR) (non-pecuniary damage) and EUR 2,100 (costs and expenses)

O.M. v. Hungary (no. 9912/15)

The applicant, O.M., is an Iranian national who was born in 1982 and currently lives in Budapest. The case concerned his detention for 58 days following his request for asylum in Hungary.

Having travelled via Serbia, O.M. arrived in Hungary in June 2014, where he was apprehended and taken into custody. He filed a claim for asylum stating that he had been forced to flee Iran, his country of origin, because of his homosexuality. At his asylum hearing he alleged that because of his sexual orientation criminal proceedings had been instituted against him and that he faced severe penalties. On 25 June 2014 the Office of Immigration and Nationality ordered for him to be detained, referring to the fact that his identity and nationality had not yet been clarified and the risk of his frustrating proceedings or running away if left at large. O.M.'s request for release was subsequently dismissed by the competent district court, which extended his detention by 60 days. In August 2014, the asylum authority's request for an additional 60-day extension was dismissed. His detention was eventually terminated on 22 August 2014 and he was designated a place of residence. In October 2014 he was recognised as a refugee.

Relying on Article 5 (right to liberty and security), O.M. complained that his detention had been arbitrary and unjustified and that the authorities had failed to take into consideration the individual circumstances of his case, in particular, his belonging to a vulnerable group.

Violation of Article 5 § 1 – concerning the period between 25 June and 22 August 2014

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 3,395 (costs and expenses)

Lazu v. the Republic of Moldova (no. 46182/08)

The applicant, Anatolie Lazu, is a Moldovan national who was born in 1954 and lives in Chişinău. The case concerned his complaint that the criminal proceedings against him had been unfair.

In August 2005 Mr Lazu, working as a bank armoured vehicle driver, attempted to overtake an illegally parked bus. As he was doing so the bus started to move, stopping abruptly so as to avoid a collision with the armoured vehicle and causing a passenger to fall from her seat and suffer injuries. A criminal investigation was initiated with evidence being heard from Mr Lazu, the victim, the bus driver and passengers from both the armoured vehicle and the bus. In October 2005, the bus driver was charged with violating traffic rules. Those proceedings were subsequently discontinued for lack of evidence. Mr Lazu was later charged with violating traffic rules and causing the passenger's injuries. He was acquitted in March 2006 based on the prosecution's failure to provide reliable evidence. In October 2007, following a series of appeals and rehearings, the Court of Appeal quashed the first-instance judgment and convicted Mr Lazu. He was ordered to pay an administrative fine and damages to the victim. In February 2008, Mr Lazu's appeal was declared inadmissible by the Supreme Court.

Relying on Article 6 (right to a fair hearing), Mr Lazu complained that the proceedings before the Court of Appeal had been unfair on the grounds that they had failed to recall and hear the witnesses for the prosecution.

Violation of Article 6 § 1

Just satisfaction: EUR 2,000 (non-pecuniary damage) and EUR 300 (costs and expenses)

Kurski v. Poland (no. 26115/10)

The applicant, Jacek Kurski, is a Polish national who was born in 1966 and lives in Gdańsk (Poland). The case concerned his complaint about a court order to publish an apology for statements he had made in a TV programme.

A member of the Polish parliament for the Law and Justice party at the time, Mr Kurski participated in a live TV programme on the channel TVP2 in May 2008 together with other politicians and experts. During the programme, he took out a copy of *Gazeta Wyborcza*, a major daily newspaper, and pointed to particular pages, referring to articles critical of the Law and Justice party. He alleged that there was an agreement between a company which was advertising in the paper and the publisher, which was behind the attacks on the party in the articles, stating that the company was “financing mass propaganda against Law and Justice.”

The newspaper’s publisher brought a civil claim against Mr Kurski, maintaining that his statements during the TV programme had harmed its good name and credibility. In June 2007 the Warsaw Regional Court granted the claim and ordered Mr Kurski to issue an apology via *Gazeta Wyborcza* and TVP2, and to pay the equivalent of 2,500 euros (EUR) to a charity. The court observed in particular that his statement had contained both facts and conclusions drawn from facts, and that the accusation that the newspaper had published articles ordered by a sponsor was clearly offensive to the publisher. The judgment was upheld on appeal and Mr Kurski’s cassation appeal was dismissed by the Supreme Court in November 2009.

Mr Kurski complained that those court decisions had violated his rights under Article 10 (freedom of expression).

Violation of Article 10

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by Mr Kurski. It further awarded him EUR 12,450 in respect of pecuniary damage.

Ziembiński v. Poland (no. 2) (no. 1799/07)

The applicant, Maciej Ziembiński, is a Polish national who was born in 1944 and lives in Kłomnice (Poland). The case concerned his conviction for insult.

Mr Ziembiński is the owner and editor of a local weekly newspaper published in the Radomsko and Bełchatów districts. In August 2004 he published an article in the paper, in which he criticised several recent business proposals for the region, such as the idea to develop a quail farm. He indirectly referred to several persons at the origin of the proposals, without using their names.

In March 2005 the mayor of the Radomsko district, the head of the district’s marketing department and an employee of that department lodged a private bill of indictment against Mr Ziembiński, accusing him, in respect of the article, of defamation committed through the mass media. They alleged in particular that the use of words such as “numbskull”, “dull boss”, “dim-witted official” and “poser” had lowered them in public opinion. In a judgment of February 2006 the competent district court found that the use of those expressions had amounted to insult committed through the mass media. The court convicted Mr Ziembiński under the relevant provision and ordered him to pay a fine of the equivalent of around EUR 2,600. The judgment was upheld on appeal in April 2006.

Mr Ziembiński complained that his conviction had violated his rights under Article 10 (freedom of expression) and alleged that the fine imposed on him had been disproportionate.

Violation of Article 10

Just satisfaction: EUR 3,385 (pecuniary damage) and EUR 1,000 (non-pecuniary damage)

Bukovčanová and Others v. Slovakia (no. 23785/07)

Krahulec v. Slovakia (no. 19294/07)

Rudolfer v. Slovakia (no. 38082/07)

The applicants in these cases are six Slovak nationals who were born between 1945 and 1980. They live in Bratislava and Zvolen (Slovakia). The cases concerned their complaint that the applicable rent-control scheme imposed disproportionate restrictions on their right to peacefully enjoy their possessions.

All applicants are owners or co-owners of residential buildings in Bratislava and Piešťany to which a rent-control scheme applies, or has applied. They obtained the ownership of the flats in the 1990s by restitution or inheritance from their relatives to whom the flats had been restored. At the time the applicants acquired the ownership of the flats, they were occupied by tenants, who paid a regulated rent. Under the applicable legislation the applicants had to accept, in particular: that the flats were occupied by those tenants; that they could charge them no more than the maximum rate of rent fixed by the State; and that they could not unilaterally terminate the leases.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained that the rent control had breached their right to peaceful enjoyment of their possessions.

Violation of Article 1 of Protocol No. 1 – in all three cases

Just satisfaction:

- in the case of *Bukovčanová and Others*: EUR 66,250 each to Margita Bukovčanová and Jozef Fedeleš, EUR 27,700 to Viera Šefčíková, and EUR 21,900 to Jozef Fedeleš junior in respect of pecuniary and non-pecuniary damage, and EUR 2,000 to the applicants for costs and expenses
- in the case of *Krahulec*: EUR 64,800 in respect of pecuniary and non-pecuniary damage, and EUR 3,000 for costs and expenses
- in the case of *Rudolfer*: EUR 158,900 in respect of pecuniary and non-pecuniary damage, and EUR 2,000 for costs and expenses

Ali Osman Özmen v. Turkey (no. 42969/04)*

The applicant, Ali Osman Özmen, is a Turkish national who was born in 1942 and lives in Ankara.

The case concerned the pre-trial detention of a civilian, Mr Özmen, and the review of its lawfulness, by a military tribunal.

Mr Özmen is the managing director of a construction and civil works company, which built a complex for the special forces command centre. In April 2004 he was charged by the military prosecutor's office with corruption, fraud in public procurement, deception and various other offences. The military tribunal ordered his pre-trial detention on 30 April 2004. Mr Özmen made several requests for release in which he complained that the military tribunal had no jurisdiction to try him since he was a civilian, but his requests were denied. He was ultimately released on 14 April 2005.

In December 2004 the military prosecutor brought a criminal prosecution against 39 individuals, including Mr Özmen. The military tribunal declined jurisdiction in favour of the Ankara Assize Court in respect of certain charges that were unrelated to the military offences. On 21 June 2007 Mr Özmen was sentenced to 40 years' imprisonment by the military tribunal, but the Military Court

of Cassation quashed the judgment. The Court has not been informed about the subsequent proceedings before the military court or the Assize Court.

Relying on Article 5 §§ 1 (c), 3 and 4 (right to liberty and security and the right to obtain a speedy ruling on the lawfulness of detention), Mr Özmen complained about his placement in pre-trial detention and about the review of its lawfulness by a military tribunal. He argued that those courts had not had jurisdiction to decide on the placement and maintaining of civilians in pre-trial detention and that they had not had the requisite independence and impartiality for such decisions. Mr Özmen also complained about the length of his detention.

No violation of Article 5 § 1

Violation of Article 5 § 3

Violation of Article 5 § 4

Just satisfaction: The applicant did not submit a claim for just satisfaction.

Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey (no. 20347/07)*

The applicants are a union, Eğitim ve Bilim Emekçileri Sendikası (“Eğitim-Sen”), set up in 1995 and based in Ankara, and a number of individuals, E. Barikan, M. Arda, A. Nesne, B. Bayır, B. Kutlu and E. Cebeci, who are Turkish nationals born in 1975, 1974, 1979, 1977, 1973 and 1975, respectively. They live in Istanbul and Samsun (Turkey).

The case concerned the allegations of a union and six of its members concerning, first, a breach of their freedom to hold a demonstration, and secondly, ill-treatment that the security forces had inflicted on the six individual applicants.

In November 2005 the union Eğitim-Sen called its members to stage a demonstration in the city centre of Ankara to claim a right to free and good-quality education. In a warning letter, the Ankara provincial governor’s office asked the union to fulfil the condition of prior notice provided for by law, pointing out that it was prohibited to demonstrate in certain places and that the demonstration would be banned if it broke the law. The governor informed the gendarmerie about the holding of an illegal demonstration, requesting that security measures be taken and that demonstrators’ vehicles from Istanbul should be prevented from going to Ankara. On the day of the demonstration, a group of demonstrators were blocked on the motorway by the security forces. According to the union’s members, the police subjected them to high-pressure water and teargas and drove at them with an armoured vehicle.

On 29 November 2005 the union filed a criminal complaint with the office of the Prosecutor-General at the Court of Cassation against the governor of Ankara and the security forces, but the Interior Ministry refused to grant any authorisation to initiate a prosecution and the Supreme Administrative Court confirmed that decision. The union members also filed a complaint, but were unsuccessful. The Kazan public prosecutor’s office brought proceedings against the six members of the union, who were acquitted on 24 July 2008 by the Criminal Court. This judgment became final, as there was no appeal on points of law.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) the six union members notably complained that they had been subjected to ill-treatment and that the authorities had not opened a criminal investigation. The union and its six members also complained that their rights under Article 11 (freedom of assembly and association) had been breached.

Violation of Article 3 (inhuman and degrading treatment) – in respect of the six union members applicants

Violation of Article 3 (investigation) – in respect of the six union members applicants

Violation of Article 11 – in respect of the six union members applicants

Just satisfaction: EUR 10,000 to E. Barikan, EUR 4,500 to M. Arda, EUR 1,800 each to B. Bayır, B. Kutlu and E. Cebeci, and EUR 900 to A. Nesne in respect of non-pecuniary damage, and EUR 4 100 jointly to these six applicants for costs and expenses

Rahmi Şahin v. Turkey (no. 39041/10)

The applicant, Rahmi Şahin, was born in 1985 and lives in Hakkari. The case concerned his complaint of having been ill-treated during his arrest.

On 12 December 2009, Mr Şahin was taken into custody on suspicion of involvement in clashes between demonstrators and the police in Hakkari. According to the police, he was apprehended as they attempted to close in on a large group of people chanting slogans in support of the PKK (Kurdish Workers' Party, an armed illegal organisation), burning tyres and attacking the police with stones. Whilst still in custody Mr Şahin made a statement to the public prosecutor denying involvement in the demonstration. He alleged that on the day in question he had left home in order to buy bread when he was approached by police officers, who insulted him and pushed him down a hill causing him to fall and land on his back. He stated that he was then arrested and hit on the back with the butt of a gun after being put in a police vehicle.

Mr Şahin's lawyer filed a complaint against the police about his alleged ill-treatment, but the public prosecutor, in March 2010, decided not to bring any charges in relation to the allegations.

Relying on Article 3 (prohibition of inhuman and degrading treatment), Mr Şahin complained that he had been beaten during his arrest and that the investigation into his allegations of ill-treatment had been inadequate.

Violation of Article 3

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 3,300 (costs and expenses)

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