



## Judgments of 9 May 2017

The European Court of Human Rights has today notified in writing five Chamber judgments<sup>1</sup> which are summarised below.

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

### Fergec v. Croatia (application no. 68516/14)

The applicants, Sandra Fergec and Neven Fergec, husband and wife, are Croatian nationals who were born in 1971 and 1974 respectively and live in Sesvete (Croatia). Mr Fergec was gravely injured in December 1996 when a member of the Croatian army activated a hand grenade in a pizza parlour.

The case concerned the civil proceedings the applicants brought against the State in 1998 for damages following the incident: Mr Fergec on account of his injuries as well as the resulting permanent consequences for his health and inability to work; and Ms Fergec on account of the stress and fear she had suffered when arriving on the scene of the incident to find her husband lying on the floor covered in blood.

The applicants' claim was ultimately dismissed in 2011. The national courts found that the State was not liable for Mr Fergec's injuries as the military serviceman, who had been off duty at the time of the incident and used a grenade with no connection to the State, had been acting in a private and not official capacity.

Relying on Article 2 (right to life) of the European Convention on Human Rights, the applicants complained about the excessive length – almost 16 years – and ineffectiveness of the civil proceedings.

**Violation of Article 2** – in respect of Mr Fergec

**Just satisfaction:** 7,830 euros (EUR) (non-pecuniary damage) and EUR 5,725 (costs and expenses) to Mr Fergec

### Eriomenco v. the Republic of Moldova and Russia (no. 42224/11)\*

The applicant, Vitalie Eriomenco, is a Moldovan national and businessman, who was born in 1969 and lives in Slobozia (Transnistrian region of the Republic of Moldova). He had set up three limited liability companies in the self-proclaimed "Moldavian Republic of Transdnistria" ("MRT") and was the director of those companies at the relevant time.

The case concerned Mr Eriomenco's complaints about his conditions of detention, lack of medical treatment necessary for his condition, his family's inability to visit him in prison and the search and seizure of his house.

<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)

On 29 March 2011 Mr Eriomenco was arrested by representatives of the “MRT” militia, who alleged that he had defrauded his main business partner. The same day his home was searched and sealed. On 1 April 2011 the Tiraspol Court ordered him to be placed in detention pending trial for an initial period of 60 days, which was subsequently extended by the courts up until his conviction. On 30 December 2013 the Slobozia Court convicted Mr Eriomenco on various counts of fraud, sentenced him to 12 years’ imprisonment and ordered the confiscation of his property. He was released on 1 September 2016 and granted remission of the remainder of his sentence.

While in detention, Mr Eriomenco complained of his conditions of detention in the various institutions where he was detained. He complained, among other things, of the lack of space, ventilation and access to daylight, the poor quality of the food, and the poor hygiene in his cell and the sanitary facilities. He also complained that his health had deteriorated during his detention, requiring his hospitalisation which had first been refused and had then been insufficiently long to enable him to complete a course of treatment at the hospital and receive adequate care. Mr Eriomenco alleged, lastly, that the “MRT” authorities had not allowed his parents to visit him.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, Mr Eriomenco complained about his conditions of detention and the lack of medical treatment necessary for his condition. Relying on Article 5 § 1 (right to liberty and security), he alleged that he had been arrested and placed in detention by unlawfully created militia and courts. He also complained, under Article 8 (right to respect for private and family life, home and correspondence), of the unlawfulness of the search and sealing of his home and of the authorities’ refusal to allow members of his family to visit him. Relying on Article 1 of Protocol No. 1 (protection of property), he alleged that the confiscation of his assets had been unlawful. He complained further, under Article 13 (right to an effective remedy), taken in conjunction with Articles 3, 5 § 1 and 8 of the Convention and Article 1 of Protocol No. 1, that he had not had an effective remedy. Relying on Article 34 (right of individual petition), he alleged that the “MRT” authorities had interfered with the exercise of his right of individual petition.

**No violation of Article 3** by the Republic of Moldova

**Violation of Article 3** (inhuman and degrading treatment) by Russia

**No violation of Article 5 § 1** by the Republic of Moldova

**Violation of Article 5 § 1** by Russia

**No violation of Article 8** by the Republic of Moldova

**Violation of Article 8** by Russia

**No violation of Article 1 of Protocol No. 1** by the Republic of Moldova

**Violation of Article 1 of Protocol No. 1** by Russia

**No violation of Article 13 taken in conjunction with Articles 3, 5 § 1, 8 and Article 1 of Protocol No. 1** by the Republic of Moldova

**Violation of Article 13 taken in conjunction with Articles 3, 5 § 1, 8 and Article 1 of Protocol No. 1** by Russia

**No violation of Article 34** by the Republic of Moldova

**Violation of Article 34** by Russia

**Just satisfaction:** The Court held that Russia was to pay to Mr Eriomenco EUR 119,755 (pecuniary damage), EUR 20,000 (non-pecuniary damage) and EUR 3,000 (costs and expenses)

## Paduret v. the Republic of Moldova and Russia (no. 26626/11)

The applicant, Dumitru Paduret, is a Moldovan national who was born in 1983 and lives in Cocieri (Republic of Moldova). He is an entrepreneur. The case concerned the seizure of his van and its contents by custom officers of the self-proclaimed “Moldavian Republic of Transdnistria” (the “MRT”) in 2010 when he had been transporting merchandise to a market in Dubasari. He had to pay a fine to recover the van and merchandise. He subsequently complained to the Moldovan

authorities and the Dubasari prosecutor's office initiated a criminal investigation. However, the investigation was suspended in 2014. Relying on Article 1 of Protocol No. 1 (protection of property), Mr Paduret complained that the seizure of his van and merchandise as well as the imposition of a fine had breached his property rights.

**No violation of Article 1 of Protocol No. 1** by the Republic of Moldova

**Violation of Article 1 of Protocol No. 1** by Russia

**Just satisfaction:** The Court held that Russia was to pay to Mr Paduret EUR 1,320 (pecuniary damage), EUR 3,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

### Murtazaliyeva v. Russia (no. 36658/05)

The applicant, Zara Murtazaliyeva, who was born in 1983 and lives in Paris (France). She is a Russian national and an ethnic Chechen. The case concerned her complaint about the overall unfairness of criminal proceedings brought against her for preparing a terrorist attack.

In 2004 the flat Ms Murtazaliyeva shared with two other women was put under secret police surveillance because she was suspected of having connections with the Chechen insurgency movement. She was subsequently stopped in the street by the police for an identity check and taken to a police station. Her bag was searched; two packages were found in it which were later examined and found to contain explosives. She was arrested and a criminal investigation opened. Her flat was searched and evidence was seized indicating that she had been planning a terrorist attack on a shopping centre. A transcript of the video tapes recorded at the flat showed her proselytising Islam to her two flatmates and discussing her hatred for Russians.

In January 2005 Ms Murtazaliyeva was convicted of preparing an explosion, inciting others – her two flatmates – to commit terrorism and carrying explosives. She was sentenced to nine years' imprisonment. The conviction was based on forensic examination reports, transcripts of the police surveillance videotapes recorded at her flat and statements made by her flatmates in open court. She appealed the conviction. She alleged, among other things, that due to technical reasons she had not been able to point out inaccuracies between the transcripts and the recordings of conversations on the videotapes. She also complained about the refusal of two of her requests to summon witnesses: the first, to examine a police officer and acquaintance of hers who had made a pre-trial statement confirming that he had established a relationship with her at the order of his superiors; and the second, to examine two attesting witnesses who had been present during the search of her bag at the police station. In March 2005, the Supreme Court upheld her conviction, but reduced the sentence to eight and a half years. It notably held that no objections had been lodged with the trial court about the quality of the videotapes or the manner in which they had been shown; that the police officer could not testify in court because he was on a work-related mission but that his pre-trial statement had been read out in court with the consent of the defence; and, that the two attesting witnesses' presence had not been necessary since Ms Murtazaliyeva claimed that the explosives had been planted in her bag before their arrival.

Ms Murtazaliyeva alleged in particular that the overall fairness of the criminal proceedings against her had been undermined because she had not been able to see or effectively examine the surveillance videotapes shown during the hearing on her case as she could not see the video screen in the courtroom; and because she had not been allowed to question in court the police officer whose actions, in her opinion, could be considered as police incitement or the two attesting witnesses, who could have clarified her allegations concerning the planting of the explosives in her bag. She relied on Article 6 §§ 1 and 3 (b) and (d) (right to a fair trial / right to adequate time and facilities for preparation of defence / right to obtain attendance and examination of witnesses).

**No violation of Article 6 §§ 1 and 3 (b)**

**No violation of Article 6 §§ 1 and 3 (d)** – as regards the complaint concerning the absence of witness A.

**No violation of Article 6 §§ 1 and 3 (d)** – as regards the complaint concerning the absence of attesting witnesses B. and K.

### Poropat v. Slovenia (no. 21668/12)

The applicant, Marino Poropat, is a Slovenian national who was born in 1951 and lives in Portorož (Slovenia). The case concerned criminal proceedings brought against him by his neighbour.

Mr Poropat has been in conflict with his neighbour for several years, with both sides instituting a number of legal proceedings against one another. In February 2004 the neighbour, R.H., lodged a criminal complaint, alleging that Mr Poropat had threatened to kill him in front of their house. Mr Poropat was ultimately convicted in July 2009 on the basis of testimonies given by R.H. as well as by the latter's colleague, who testified that R.H. had told him about the incident. Mr Poropat was sentenced to three months' imprisonment, suspended.

Throughout the proceedings Mr Poropat denied that the incident had ever taken place and, in his defence, argued that neither R.H. nor his colleague could be believed. In particular, he repeatedly requested that a long term friend of R.H. be examined as a witness because he could testify to the fact that R.H. had been influencing witnesses against him. The trial court refused this request on the grounds that the facts had been sufficiently established and that, in any event, the proposed witness could not testify directly about the incident leading to the charges. This argument was endorsed by the courts at all subsequent levels of jurisdiction, including the courts dealing with an – unsuccessful – attempt by Mr Poropat to reopen the criminal proceedings. Mr Poropat also repeatedly criticised, to no avail, the failure to obtain video footage of the incident, despite R.H. having admitted in court that there were about a dozen cameras installed in and around their house.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Poropat complained that his defence rights had not been respected in the proceedings against him because of the refusal to admit evidence he had wished to have introduced.

### **Violation of Article 6 §§ 1 and 3 (d)**

**Just satisfaction:** EUR 5,000 (non-pecuniary damage) and EUR 1,500 (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.