



Judgments of 22 May 2018

The European Court of Human Rights has today notified in writing 11 Chamber judgments¹:
nine judgments are summarised below;

separate press releases have been issued for two other Chamber judgments in the cases of *Jureša v. Croatia* (application no. 24079/11) and *Zelenchuk and Tsytsyura v. Ukraine* (nos. 846/16 and 1075/16).

The judgments below are available only in English.

Hysi v. Albania (application no. 72361/11)

Malo v. Albania (no. 72359/11)

Muca v. Albania (no. 57456/11)

Topi v. Albania (no. 14816/08)

All four cases concerned criminal proceedings held in the absence of the accused. The accused are four Albanian nationals. All but one are currently serving sentences of between 13 and 25 years' imprisonment.

Three of the applicants were living abroad and only learned of their convictions when being extradited to Albania in 2006/7. These were the applicants: Ardit Hysi, born in 1977, and convicted *in absentia* in 2005 of attempted theft resulting in death; Vladimir Malo, born in 1975, and convicted *in absentia* in 2002 of attempted armed robbery, negligent homicide and premeditated murder; and, Arben Topi, born in 1977, and convicted *in absentia* in 2000 of establishing and participating in an armed gang and attempted intentional murder.

The remaining applicant, Blerim Muca, born in 1970 and living in Tirana, was acquitted in 1999 of premeditated murder. A year later however, he was convicted following a retrial on appeal by his co-accused and the prosecutor. His family informed him in 2005 of his conviction as he had gone abroad following his acquittal at first instance.

Mr Hysi and Mr Malo were subsequently granted leave to appeal out of time, but both the Court of Appeal and the Supreme Court upheld their convictions. Mr Muca applied for leave to appeal out of time, without success. Mr Topi lodged a constitutional appeal against his conviction *in absentia*, which was declared time-barred in 2007. The other three applicants' constitutional appeals were all dismissed.

Relying in particular on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, all the applicants alleged that the proceedings against them had been unfair because they had been held in their absence, without their knowledge and without their ever having waived their right to appear in court. Mr Topi also alleged that the rejection of his constitutional appeal had breached his right of access to court.

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

- case of *Hysi*:

Violation of Article 6 § 1

Just satisfaction:-Mr Hysi did not submit a claim for just satisfaction.

-case of *Malo*:

Violation of Article 6 § 1

Just satisfaction: Mr Malo did not submit a claim for just satisfaction.

- case of *Muca*:

Violation of Article 6 § 1

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Muca.

- case of *Topi*:

Violation of Article 6 § 1 – on account of the proceedings held in the absence of Mr Topi

Violation of Article 6 § 1 (right of access to court)

Just satisfaction: Mr Topi did not submit a claim for pecuniary or non-pecuniary damage. The Court awarded him 1,000 euros (EUR) in respect of costs and expenses.

United Civil Aviation Trade Union and Csorba v. Hungary (no. 27585/13)

The applicants are the United Civil Aviation Trade Union, a trade union registered in Budapest, and Attila Csorba, a Hungarian national who was born in 1970 and lives in Vecsés (Hungary). Mr Csorba is the president of the United Civil Aviation Trade Union.

The case concerned the applicants’ complaint about the police banning a demonstration they had been planning to hold on the hard shoulder of a road leading to Budapest’s main international airport.

The union wanted to hold a two-hour demonstration of between 50 and 100 people in October 2012 in order to protest about planned salary cuts for airport workers. After a meeting with the organisers, the police decided to prohibit the demonstration on the grounds that it would create a danger for traffic and prevent access to the airport.

The police decision was subsequently upheld by a court.

Relying on Article 11 (freedom of assembly and association) of the European Convention, the applicants complained that the ban on their demonstration had been a disproportionate interference with their rights.

Violation of Article 11

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. It further awarded them, jointly, EUR 2,000 for costs and expenses.

Gafà v. Malta (no. 54335/14)

The applicant, Kenneth Gafà, is a Maltese national who was born in 1972 and is currently serving a 35-year sentence at the Corradino Correctional Facility, Paola (Malta), for the murder of his former partner.

The case concerned his complaint that the financial conditions imposed in granting him bail pending the criminal proceedings against him had been excessive.

Mr Gafà was arrested in 2010 and spent the next 32 months in pre-trial detention. He was granted bail in August 2012 subject to, among things, paying a deposit by way of security of 15, 000 euros (EUR) and undertaking a personal guarantee of EUR 25,000. He could not however afford to pay the deposit and filed four applications requesting to have the amount reduced. His applications were all rejected until August 2013 when the domestic court accepted that his mother stand as surety. He brought constitutional redress proceedings to complain about his detention and the 'exorbitant sum' set as a deposit, without success.

Relying on Article 5 § 3 (right to liberty and), Mr Gafà alleged that he had been held in custody past the maximum of 20 months allowed by law because he could not afford to pay the bail bond necessary for his release.

Violation of Article 5 § 3

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 Gafà. It further awarded him EUR 3,000 for costs and expenses.

Devinar v. Slovenia (no. 28621/15)

The applicant, Verena Devinar, is a Slovenian national who was born in 1959 and lives in Nova Gorica (Slovenia).

The case concerned decisions refusing her application for a disability allowance.

Ms Devinar was a cleaning lady until she developed serious medical problems with her left wrist and right arm and was recognised as having a partial disability in 2006. She subsequently applied to the administrative authorities for a disability pension. However, in-house experts who examined her and her medical records found that she did not have a physical impairment, and her application was dismissed.

Ms Devinar brought judicial proceedings before the domestic courts in 2012 to challenge the administrative decisions, without success. The domestic courts based their dismissal of her claim on the findings of the experts in the prior administrative decisions and on their own observation of Ms Devinar at an oral hearing on her case. Finally, in 2014, her constitutional complaint was not accepted for consideration.

Relying on Article 6 § 1 (right to a fair hearing), Ms Devinar alleged that the domestic courts' decisions in her case had been unfair because they had been based on opinions of experts appointed by her opponent in the proceedings, and had refused to appoint an independent expert.

No violation of Article 6 § 1

Svetina v. Slovenia (no. 38059/13)

The applicant, Matjaž Svetina, is a Slovenian national who was born in 1982 and lives in Koper (Slovenia).

The case concerned the applicant's complaint about the lack of a court order to access his mobile telephone data, evidence which was later allegedly used to convict him of murder.

Mr Svetina was convicted of aggravated murder in September 2009. He appealed against the judgment to the appeal court, the Supreme Court and the Constitutional Court. He argued in

particular that the police had illegally accessed his mobile telephone data and that of the victim as they had not obtained court orders to examine the devices.

The Supreme Court ultimately found that the police had examined his telephone without a court order, but decided that the evidence obtained in that way would have come to light anyway in other ways and did not have to be ruled inadmissible.

Mr Svetina complained that the use in the criminal proceedings of the evidence obtained through the examination of his mobile telephone and that of the victim had violated his rights under Article 6 § 1 (right to a fair trial).

No violation of Article 6 § 1

M.R. and D.R. v. Ukraine (no. 63551/13)

The applicants, M.R. and D.R., father and son, were born in 1958 and 2004 respectively. M.R. is a Czech national who lives in Prague.

The case concerned D.R.'s abduction by his Ukrainian mother following his parents' divorce in 2007.

In October 2009 M.R. brought proceedings in Ukraine against his former wife for the return of his son under the Hague Convention on the Civil Aspects of International Child Abduction. In July 2010 the Ukrainian courts ordered the child's return to his father in the Czech Republic. However, this order has still not been enforced, despite fines imposed by the bailiffs on the mother, and their visits to the child's school and place of residence. Furthermore, the Ukrainian courts have since decided that it was in the child's best interests to continue to live with the mother, given that the child has adapted well to living in Ukraine.

In the meantime, the Czech authorities have granted M.R. sole custody of his son.

Relying on Article 8 (right to respect for private and family life), M.R. complained, on his own behalf and on behalf of his son, that the Ukrainian authorities had failed to ensure the return of his son to the Czech Republic.

Violation of Article 8

Just satisfaction: EUR 8,000 (non-pecuniary damage) and EUR 1,526 (costs and expenses) to M.R.

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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.