



Judgments of 17 July 2018

The European Court of Human Rights has today notified in writing 16 judgments¹:

nine Chamber judgments are summarised below; separate press releases have been issued for four other Chamber judgments in the cases of *Ronald Vermeulen v. Belgium* (application no. 5475/06), *Sandu and Others v. the Republic of Moldova and Russia* (nos. 21034/05, 41569/04, 41573/04, 41574/04, 7105/06, 9713/06, 18327/06, and 38649/06), *Mariya Alekhina and Others v. Russia* (no. 38004/12), and *Mazepa and Others v. Russia* (no. 15086/07);

three Committee judgments, concerning 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 ().*

SA Patronale hypothécaire v. Belgium (application no. 14139/09)*

The applicant company, SA Patronale Hypothécaire, is a legal entity under Belgian law with its registered office in Brussels.

The case concerned the denial of the company's application for authorisation to pursue its capital investment activity.

SA Patronale Hypothécaire granted mortgage loans and had a capital investment activity. In 1993 legislation to abolish the status of capital investment companies entered into force. The implementing order provided that only lending institutions and insurance companies which had the requisite authorisation would be able to pursue capital investment activity from 1 January 2008. In May 2007 SA Patronale Hypothécaire applied for authorisation as a lending institution but its application was denied by the Commission for Banking, Finance and Insurance, which found in particular that three individuals given as serving directors had been disqualified from executive positions in the finance sector. The applicant company appealed to the *Conseil d'État* (the highest administrative court), asking it, in particular, to give a ruling that it was entitled to act as a financial institution and that its directors were not barred by any professional disqualification.

The *Conseil d'État* denied the company's appeal, finding in particular that it was not entitled to give a ruling as to the rights and obligations of the parties involved or to order the respondent to take certain measures in order to implement the judgment. It also stated that it only had jurisdiction to annul individual administrative acts in the event of illegality and that claims going beyond the annulment of the disputed decisions did not fall within its jurisdiction.

Relying in particular on Article 6 § 1 (right of access to a court) of the European Convention on Human Rights, the applicant company complained that it had not had its case heard by a court with full jurisdiction and that there had been no effective remedy.

No violation of Article 6 § 1

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

Egill Einarsson v. Iceland (no. 2) (no. 31221/15)

The case concerned a complaint by an Icelandic national, Egill Einarsson, about rulings of the domestic courts denying his damage claims and his claim for the payment of his legal costs in defamation proceedings.

Mr Einarsson, born in 1980, was a well-known writer of blogs, articles and books, who had also appeared on television. Certain of his published views attracted attention and controversy, including his views about women and their sexual freedom.

He was accused of rape in 2011 and in early 2012 of having committed another sexual offence a few years earlier. Prosecutors later dismissed the cases for lack of evidence. In November 2012, Mr Einarsson gave an interview to a local magazine, which included his picture on the front page and his comments on the rape accusation. He stated several times that the accusations were false.

On the same day as the interview, a Facebook page was set up to protest about the interview and to encourage the editor to remove Mr Einarsson's picture from the magazine's front page. Later that day, X posted a comment on the page stating that: "This is also not an attack on a man for saying something wrong, but for raping a teenage girl ... It is permissible to criticise the fact that rapists appear on the cover of publications which are distributed all over town...".

In December 2012 Mr Einarsson lodged defamation proceedings before the District Court of Reykjavik, requesting that X be punished under the Penal Code for publishing the statements in question, that the statements be declared null and void and that X carry the cost of publishing the main content of the judgment in a newspaper and pay his legal costs.

In its judgment the District Court declared the statements made by X null and void. However, it did not make an award to Mr Einarsson in respect of non-pecuniary damage or order X to bear the cost of publishing the judgment in a newspaper. It also held that each party should bear their own legal costs. In December 2014 the majority (two out of three judges) of the Supreme Court upheld the District Court's judgment.

Relying on Article 8 (right to respect for private and family life), Mr Einarsson alleged that the domestic courts' conclusions had meant that anyone could call him a rapist in speech or in writing without him being able to defend himself. He further alleged that he had not had an effective remedy to protect his rights without suffering considerable financial loss.

No violation of Article 8

Abdilla v. Malta (no. 36199/15)

Ruiz Pena and Perez Oberght v. Malta (nos. 25218/15 and 25251/15)

Both cases concerned complaints about conditions of detention in the Corradino Correctional Facility.

The applicant in the first case is Jean Pierre Abdilla. He is a Maltese national who was born in 1975. The applicants in the second case are Gerardo Jose Ruiz Pena, a national of Venezuela, and Richard Andrews Perez Oberght, from the Dominican Republic. They were born in 1964 and 1973 respectively.

The applicant in the first case is serving a 16-year sentence for drugs offences, which was imposed in 2009. He has mostly been held since December 2009 in Division 2 of the Corradino prison. He complained about the dilapidated state of the area of the prison where he was detained, which dated back about 200 years, including a lack of light and air, and about his cells. He stated in particular that the cells were stuffy in the summer or cold in the winter and that access to running

water was limited. Complaints had been made about the conditions at the prison, including constitutional actions by inmates, but they had not led to any change.

The applicants in the second case are also being held in the Corradino Correctional Facility, in Division 3. Mr Pena is serving a 10-year sentence while Mr Oberght was jailed in 2009 for nine years. Both men made a series of complaints about their conditions of detention. In particular, Mr Pena complained that his cell only had one window, which was high up, and one air vent, which was clogged with dirt and debris. The cell was hot in the summer and cold in the winter because of a lack of ventilation and he had to use a bucket to flush the toilet. Mr Oberght also complained of a lack of light in his cell, a lack of drinking water and of the presence of dust which affected his asthma.

Mr Abdilla complained about the conditions of his detention under Article 3 (prohibition of inhuman or degrading treatment) and under Article 13 (right to an effective remedy) in conjunction with Article 3. Mr Pena and Mr Oberght complained solely under Article 3.

In the case of **Abdilla**:

No violation of Article 3 concerning the period following 4 December 2011

Violation of Article 13 taken in conjunction with Article 3

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

In the case of **Ruiz Pena and Perez Oberght**:

No violation of Article 3

Mangîr and Others v. the Republic of Moldova and Russia (no. 50157/06)

The applicants, Stefan Mangîr, Vitalie Vasiliev, Igor Daţco, Constantin Condrea and Alexandru Pohila, are Moldovan nationals who were born in 1967, 1978, 1976, 1979, and 1964 respectively. Mr Mangîr and Mr Vasiliev live in Chişinău and Cauşeni while Mr Daţco, Mr Condrea, and Mr Pohila live in Bender (all in the Republic of Moldova).

The applicants are all Moldovan police officers and the case concerned their complaints of unlawful detention and ill-treatment in the self-proclaimed “Moldovan Republic of Transdniestria” (“MRT”).

Officers Mangîr, Vasiliev and Condrea were carrying out a criminal investigation in Tiraspol in the “MRT” in June 2006 when they were arrested by “the MRT secret service”. Officers Daţco and Pohila were also arrested when they went to Tiraspol to find out what had happened to their colleagues. The men were eventually released later in June but Officer Mangîr was allegedly beaten up and injected with an unknown substance while in detention.

The applicants were accused in the “MRT” media of being members of “black squadrons” whose aim was to kidnap politicians and other people who were an annoyance to the Moldovan authorities.

The men complained about their arrest and detention under Article 5 §§ 1 (c), 3 and 4 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court). Relying on Article 3 (prohibition of inhuman or degrading treatment), they complained about ill-treatment, their conditions of detention, such as a lack of natural light and overcrowding, and that they had not been given the requisite medical assistance. They also raised a complaint under Article 13 (right to an effective remedy) taken in conjunction with Article 3 and Article 5.

No violation of Article 3 (treatment) by the Republic of Moldova in respect of Mr Mangîr

Violation of Article 3 (treatment) by the Russian Federation in respect of Mr Mangîr

No violation of Article 3 by the Republic of Moldova in so far as the poor conditions of detention of the applicants were concerned

Violation of Article 3 by the Russian Federation in so far as the poor conditions of detention of the applicants were concerned

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

Violation of Article 5 § 1 by the Russian Federation

No violation of Article 5 §§ 3 and 4 by the Republic of Moldova

No violation of Article 13 in conjunction with Article 3 by the Republic of Moldova

Violation of Article 13 in conjunction with Article 3 by the Russian Federation

Just satisfaction: The Court held that the Russian Federation was to pay: EUR 25,000 to Mr Mangîr, EUR 20,000 to Mr Condrea and EUR 15,000 each to Mr Vasiliev, Mr Daţco and Mr Pohila in respect of non-pecuniary damage; and EUR 3,000 jointly to all applicants in respect of costs and expenses.

Petrović and Others v. Montenegro (no. 18116/15)

The applicants, Božidar Petrović, Alma Kuzmanović, Kristina Petrović and Željko Petrović, are Montenegrin nationals who were born in 1956, 1952, 1975, and 1980 respectively. Božidar Petrović lives in Tivat and Alma Kuzmanović, Kristina Petrović, and Željko Petrović live in Kotor (both in Montenegro).

The case concerned their complaint that coastal land they should have inherited had effectively been expropriated without compensation.

In 2009 the applicants instituted civil proceedings against the State over two plots of land situated on the coast belonging to their father. They requested that they be recognised as owners of the land seeing as their father had not been registered as the owner of the land when he had died in 1997 and the land had been assigned to the State.

The courts, although accepting that the land had been owned by their predecessor, dismissed their claim because the land was in the coastal zone and, under the relevant domestic laws, could not be privately owned. All their appeals were unsuccessful. In particular, in 2015, the Supreme Court upheld the lower courts' decisions, clarifying that it was possible in exceptional cases to privately own land in the coastal zone under the Property Act 2009, but only if the property right had been granted after entry into force of that Act, which was not the applicants' case.

Relying in particular on Article 6 § 1 (right to a fair hearing), they alleged that the courts' decisions rejecting their claim had been arbitrary. In particular, they complained that the courts had not examined their argument that it had not been true that coastal land could not be privately owned, citing numerous other plots of land in the coastal zone which had been private property, including a plot of land they had owned which had been adjacent to the one at issue in the domestic proceedings.

No violation of Article 6 § 1

Fefilov v. Russia (no. 6587/07)

The applicant, Sergey Fefilov, is a Russian national who was born in 1979 and before his conviction lived in Izhevsk (Russia).

The case concerned conditions of detention in a penal institution and the fairness of criminal proceedings.

Mr Fefilov was arrested in March 2005 and taken to a police station, where he was allegedly beaten and coerced into confessing to having committed the murder of a law-enforcement officer. Later he retracted his confession, stating that it had been given as a result of coercion and in the absence of a lawyer.

Mr Fefilov was subsequently convicted in December 2005 and sentenced to 12 years' imprisonment. The domestic courts based their verdict mainly on his confession and dismissed his complaint of ill-treatment. His appeal against the conviction was dismissed in June 2006.

In October 2006 Mr Fefilov was transferred to a penal institution in the Republic of Mordoviya, where there was allegedly a high percentage of HIV-positive detainees, some of whom worked with him at the facility's sewing workshop.

Relying in particular on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), Mr Fefilov complained, among other things, that the criminal proceedings against him had been unfair because his conviction had been based on a confession he had made under duress and without legal representation.

Violation of Article 6 §§ 1 and 3 (c)

Just satisfaction: EUR 4,000 (non-pecuniary damage) and EUR 510 (costs and expenses)

Sergey Ryabov v. Russia (no. 2674/07)

The case concerned an allegation of police brutality.

The applicant, Sergey Ryabov, is a Russian national who was born in 1980. He is currently serving a prison sentence in Bezhetsk, Tver Region (Russia), for, among other things, the murder of a driver who worked for the Ruza police.

Mr Ryabov was arrested on 11 July 2005, a day after the murder, and placed in a temporary detention facility at Ruza district police station. He confessed to the crime in the early hours of the morning and was brought before a judge the next day. He was placed in pre-trial detention until being found guilty in April 2006 and sentenced to 18 years' imprisonment. In convicting him, the courts relied on his confession and the investigating authorities' refusal to open a criminal case into his allegations of police ill-treatment. His appeals against this decision were dismissed and the proceedings were ultimately terminated in February 2008.

A criminal investigation was never begun into Mr Ryabov's allegations that the police had punched, kicked and hit him during his arrest and police custody and at the courthouse following the hearing with the judge. An internal inquiry was carried out, which resulted in two police officers being reprimanded and a medical report being drawn up, finding multiple bruises and abrasions on his body. The authorities concluded however that those injuries could have occurred because he had resisted arrest.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Ryabov alleged that he had been ill-treated by the Ruza police in order to make him confess to the murder and that no effective investigation had been carried out into his allegations. Also relying on Article 6 § 1 (right to a fair trial), he complained that his conviction had been unfair because it had been based on statements he had made under duress.

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 3 (investigation)

Violation of Article 6 § 1

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

Shulmin and Others v. Russia (nos. 15918/13, 51623/15, 53700/15, 18524/16, 33214/17, 34421/17, 35675/17, and 36267/17)

The applicants, Oleg Shulmin, Aleksandr Krasnov, Stanislav Novikov, Yuriy Sofronov, Denis Alekseyev, Timur Aldergot, Aleksey Kaplin, and Marina Pyshnograd, are Russian nationals who were born in

1961, 1984, 1991, 1984, 1994, 1988, 1988, and 1982 respectively.

Relying on Article 3 (prohibition of inhuman or degrading treatment), all eight applicants complained about being held in metal cages during court hearings on their cases in criminal proceedings brought against them on various dates between 2012 and 2017.

Violation of Article 3 (degrading treatment)

Just satisfaction: EUR 7,500 to each applicant for all heads of damage combined

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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.