

Press release issued by the Registrar

**Chamber judgments concerning
Austria, Azerbaijan, France, Greece, Russia,
“the former Yugoslav Republic of Macedonia” and Ukraine**

The European Court of Human Rights has today notified in writing the following 21 Chamber judgments, none of which are final.¹

Repetitive cases² and one length-of-proceedings case, with the Court’s main finding indicated, can be found at the end of the press release.

Violations of Article 6 § 1 (length and fairness)

Richter v. Austria (application no. 4490/06)

The applicant, Richard Richter, is an Austrian national who was born in 1966 and lives in Wolfurt (Austria).

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) of the European Convention on Human Rights, Mr Richter complained about the length and unfairness of proceedings concerning his complaint that the ramp of an underground car park failed to comply with the statutory distance from his property.

The European Court of Human Rights held unanimously that there had been violations of Article 6 § 1 of the Convention on account of the excessive length, five years and almost six months, of the proceedings and on account of the lack of a hearing before the Administrative Court. Mr Richter was awarded 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 for costs and expenses. (The judgment is available only in English.)

***No violation of Article 6 § 1
No violation of Article 1 of Protocol No. 1***

Saccoccia v. Austria (no. 69917/01)

The applicant, Stephen Anthony Saccoccia, is a national of the United States of America who was born in 1958 and is currently serving a 660-year prison sentence in the United States for large-scale money laundering.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

In the context of the criminal proceedings against Mr Saccoccia, the Austrian courts decided to take over the execution of a final forfeiture order issued by a United States court in respect of his Austrian assets, amounting to 80,000,000 Austrian schillings (approximately EUR 5,800,000). Relying on Article 6 § 1 (right to a fair hearing), he complained about the lack of a public hearing concerning the execution of the forfeiture order in Austria. Further relying on Article 1 of Protocol No. 1 (protection of property), he alleged that his right to peaceful enjoyment of his property had been infringed.

The Court considered that the proceedings had involved technical issues of inter-State cooperation in combating money-laundering through the enforcement of a foreign forfeiture order and had not required the Austrian courts to hear witnesses or indeed the applicant himself, his credibility not having been in question. The courts had therefore been able to fairly and reasonably decide the case on the basis of the parties' written submissions and there had been no need for an oral hearing. Accordingly, the Court held unanimously that there had been no violation of Article 6 § 1.

The Court further considered that the execution of the forfeiture order had had a basis in Austrian law and had the legitimate aim of improving international co-operation in ensuring that money derived from drug dealing was actually forfeited. Furthermore, the applicant had been represented throughout the Austrian proceedings by a lawyer and had made ample use of the possibility to submit arguments. The Court therefore found that the execution of the forfeiture order had not amounted to a disproportionate interference with the applicant's property rights and held unanimously that there had been no violation of Article 1 of Protocol No. 1. (The judgment is available only in English.)

Violation of Article 11

Aliyev and Others v. Azerbaijan (no. 28736/05)

The applicants are ten Azerbaijani nationals. In May 2003 they founded "Azerbaijani Lawyers Forum", a non-profit organisation.

Relying in particular on Article 11 (freedom of assembly and association), the applicants complained about the significant delay in the state registering their association, with the result that their organisation could not acquire legal status.

The Court found that the Ministry of Justice, despite the statutory ten-day time-limit in force at the relevant time, had only issued a formal response to the applicants' registration request after almost eight months. Furthermore, the domestic law at that time had not provided sufficient protection against such a delay. The Court therefore concluded that that had amounted to an interference by the authorities with the applicants' right to freedom of association which had not been "prescribed by law". Accordingly, it held unanimously that there had been a violation of Article 11. (The judgment is available only in English.)

No violation of Article 6 § 1

Unédic v. France (no. 20153/04)

The applicant, AGS Unédic, is an association responsible for managing the insurance scheme covering employees' outstanding claims. Its registered office is in Paris.

The applicant association complained that the Court of Cassation had changed its position with retroactive effect, in particular by allowing a retroactive increase in the maximum

amounts that could be claimed by employees in the case of a group procedure, thus placing a heavier burden on the applicant association. It relied on Article 6 § 1 (right to a fair hearing).

The Court considered that the requirements of legal certainty and preservation of litigants' legitimate expectations did not give rise to an acquired right to settled case-law. It therefore held unanimously that there had been no violation of Article 6 § 1. (The judgment is available only in French.)

No violation of Article 6 § 1

Vaillant v. France (no. 30609/04)

The applicant, Philippe Vaillant, is a French national who was born in 1959 and lives in Nancy (France). He is a dental surgeon.

The case concerned proceedings instituted following a complaint against the applicant before the Social Insurance Division of the National Council of the Dental Surgeons Association (*ordre des chirurgiens-dentistes*), to which the *Conseil d'Etat* had remitted the case after setting aside the Division's initial decision. The Social Insurance Division upheld the decision to prohibit the applicant from providing treatment to those insured under the social-security scheme for a period of four months, of which two months were suspended. Relying on Article 6 § 1 (right to a fair hearing), the applicant complained that the Division had lacked impartiality and independence in that four of its five members who had examined the case following its remittal had been involved in the previous decision that had been set aside.

Since the remittal of the case had related solely to a procedural issue, the Court considered that the applicant's doubts as to the impartiality of the judges called upon to rehear his case could not be said to have been objectively justified. It therefore held unanimously that there had been no violation of Article 6 § 1. (The judgment is available only in French.)

Violation of Article 6 § 2
Violation of Article 5 § 3

Nerattini v. Greece (no. 43529/07)

The applicant, Gianni Nerattini, is an Italian national who was born in 1938 and lives in Samos (Greece).

Relying on Article 6 § 2 (presumption of innocence), Mr Nerattini complained that his indictment in 2007 on drug-related charges also stated that he was guilty of misappropriation of antiquities even though he had not been formally accused or tried for such acts. He also alleged that his pre-trial detention was not based on relevant and sufficient reasons, in breach of Article 5 § 3 (right to liberty and security).

The Court held unanimously that there had been a violation of Article 6 § 2 and a violation of Article 5 § 3 and awarded Mr Nerattini EUR 15,000 in respect of non-pecuniary damage and EUR 1,850 for costs and expenses. (The judgment is available only in English.)

Violation of Article 5 §§ 1 and 3
Violation of Article 6 § 1 (length)
Violation of Article 13

Brovchenko v. Russia (no. 1603/02)

The applicant, Sergey Vasilyevich Brovchenko, is a Russian national who was born in 1963 and lives in Moscow.

Arrested on suspicion of drug dealing, Mr Brovchenko was remanded in custody in May 1997; he was released in January 2004 pending trial. He was subsequently convicted and sentenced to six years and seven months' imprisonment, upheld on appeal. The case concerned the applicant's complaint about the unlawfulness and excessive length of his pre-trial detention and the excessive length of the criminal proceedings brought against him. He relied on Article 5 §§ 1 and 3 (right to liberty and security), Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy).

The Court held unanimously that there had been a violation of Article 5 § 1 on account of the unlawfulness of Mr Brovchenko's detention from 19 September 2002 to 14 April 2003, and a further violation of Article 5 § 3 on account of the excessive length of his pre-trial detention from 19 September 2002 until 12 January 2004.

The Court also held that there had been a violation of Article 6 § 1 on account of the excessive length, eight years and 18 days, of the criminal proceedings against him and a further violation of Article 13 concerning the lack of an effective remedy in respect of the violation of his right to have his case tried within a reasonable time. (The judgment is available only in English.)

Violation of Article 10

Kazakov v. Russia (no. 1758/02)

The applicant, Aleksandr Nikolayevich Kazakov, is a Russian national who was born in 1948 and lives in Karachev (Russia). He is a former military officer.

Relying in particular on Article 10 (freedom of expression), he complained that he was found liable for defamation following his letter of complaint about a military unit commander, ordered to pay damages and make a written apology.

Given the text of the applicant's letter as a whole, a complaint which had not been vexatious or written in bad faith, and the context in which it had been written, a private individual reporting irregularities to a body competent to deal with such complaints, the Court found that the defamation proceedings against the applicant, in particular ordering him to issue an apology, had been excessive and disproportionate. The Court therefore held unanimously that there had been a violation of Article 10. (The judgment is available only in English.)

Violations of Article 2 (life and investigation)

(Applicants) Violation of Article 3 (treatment)

Violation of Article 5

Violation of Article 13 in conjunction with Article 2

Nasukhanova and Others v. Russia (no. 5285/04)

The applicants are six Russian nationals: Zara Khasanovna Nasukhanova, born in 1954; Magomed Dulayevich Kasumov, born in 1936; Razet Magomedovna Kasumova, born in 1976; Luiza Magomedovna Kasumova, born in 1981; Kristina Magomedovna Kasumova, born in 1984; and, Kamila Magomedovna Kasumova, born in 1982. They live in Pervomayskaya (Chechen Republic). They are the parents and sisters of Ruslan Magomedovich Kasumov, born in 1974, who has not been seen since the early hours of 3 February 2003 when he was taken away from a relative's house in the village of Pervomayskaya by armed men wearing camouflage uniforms.

Relying in particular on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy), the applicants alleged that Ruslan Kasumov disappeared after being detained by Russian servicemen and that the domestic authorities failed to carry out an effective investigation into their allegations.

The Court noted that the domestic investigation and witness statements confirmed that the abductors had travelled in four APCs and four Ural vehicles. It considered it unlikely that, as suggested by the Government, illegal armed groups in stolen military vehicles could have moved freely through Russian military check-points and abducted the applicants' relative. Those elements in particular strongly supported the allegation that Ruslan Kasumov had been apprehended by Russian servicemen. Drawing inferences from the Russian Government's failure to submit documents – despite specific requests from the Court – to which it exclusively had access and the fact that it had not provided any other plausible explanation for the events in question, the Court considered that the applicants' relative had been arrested by Russian servicemen during an unacknowledged security operation. There had been no reliable news of Ruslan Kasumov since his disappearance and the Russian Government had not submitted any further explanations. In the context of the conflict in Chechnya, when a person had been detained by unidentified servicemen without any subsequent acknowledgment of their detention, that situation could be regarded as life-threatening. The absence of the applicants' relative or any news of him for more than five years corroborated that assumption. Therefore the Court found that Ruslan Kasumov had to be presumed dead following his unacknowledged detention by Russian servicemen. Noting that the authorities had not justified the use of lethal force by their agents, the Court concluded that there had been a violation of Article 2 in respect of the applicants' relative.

The Court further held that there had been a violation of Article 2 concerning the Russian authorities' failure to carry out an effective criminal investigation into the circumstances in which Ruslan Kasumov had disappeared.

Furthermore, the Court found that the applicants had suffered, and continued to suffer, distress and anguish as a result of the disappearance of their relative and their inability to find out what had happened to him. The manner in which their complaint had been dealt with by the authorities had to be considered to constitute inhuman treatment, in violation of Article 3.

The Court also found that Ruslan Kasumov had been held in unacknowledged detention without any of the safeguards contained in Article 5, which constituted a particularly grave violation of the right to liberty and security enshrined in that article.

Finally, the Court held that there had been a violation of Article 13 as regards the alleged violation of Article 2, and that no separate issues arose under Article 13 in respect of the alleged violations of Articles 3 and 5.

The Court awarded Ruslan Kasumov's parents, jointly, EUR 2,000 in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage. The Court awarded each of his sisters EUR 2,500 in respect of non-pecuniary damage. For costs and expenses the applicants were awarded EUR 3,650. (The judgment is available only in English.)

Violation of Article 6 § 1 (length)

Aybabin v. Ukraine (no. 23194/02)

The applicant, Dmitriy Aleksandrovich Aybabin, is a Ukrainian national who was born in 1970 and is currently serving a 15-year prison sentence in Zhovti Vody Prison (Ukraine) for murder.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), Mr Aybabin complained of the excessive length of the criminal proceedings brought against him.

The Court held unanimously that there had been a violation of Article 6 § 1 on account of the excessive length, four years and three months, of the proceedings against him. Mr Aybabin was awarded EUR 800 in respect of non-pecuniary damage and EUR 40 for costs and expenses. (The judgment is available only in English.)

Violation of Article 6 § 1 (fairness)

Lutsenko v. Ukraine (no. 30663/04)

The applicant, Stanislav Nikolayevich Lutsenko, is a Ukrainian national who was born in 1977 and lives in Makiyivka (Ukraine).

Relying on Article 6 § 1 (right to a fair trial), Mr Lutsenko complained that he was convicted of murder and unlawful possession of firearms on the basis of statements made by his co-accused, Mr N.L, during the pre-trial investigation, which were then retracted as they had allegedly been made under duress.

The Court noted, in particular, that Mr N.L. had made the depositions at issue during his first interrogation as a witness, namely when under an obligation to reveal all information known to him on pain of criminal punishment and without the statutory right to consult a lawyer. He had then promptly and consistently retracted his statements, alleging that they had been made under duress. Even though the applicant had not been allowed to confront Mr N.L in an open court, the latter's depositions had nonetheless been used to a decisive degree for the qualification of the applicant's actions. The Court therefore concluded that the rights of the defence had been restricted such that the fairness of the proceedings as a whole had been compromised and held unanimously that there had been a violation of Article 6 § 1. Mr Lutsenko was awarded EUR 2,000 in respect of non-pecuniary damage. (The judgment is available only in English.)

Violation of Article 5 § 1

Novik v. Ukraine (no. 48068/06)

The applicant, Valeriy Valeryevich Novik, is a Belarusian national who was born in 1969 and lives in Kyiv.

The case concerned Mr Novik's complaint about the unlawfulness of his detention from 30 November to 27 December 2006 pending extradition to Belarus. He relied on Article 5 § 1 (right to liberty and security).

The Court recalled that it had already found in a previous case which had raised a similar issue that Ukrainian legislation had not provided a procedure that had been sufficiently accessible, precise and foreseeable in its application to avoid the risk of arbitrary detention pending extradition. The Court did not see any reason to come to a different conclusion in the

applicant's case and, accordingly, found that there had been a violation of Article 5 § 1. (The judgment is available only in English.)

Violation of Article 8

Saviny v. Ukraine (no. 39948/06)

The applicants, Sergiy Leonidovych Savin, and his wife, Valentyna Oleksandrivna Savina, are Ukrainian nationals who were born in 1957 and 1956 respectively and live in Romny (Ukraine). They have both been blind since childhood.

Their case concerned in particular their complaint about a decision of December 2004 to place their three children, born in 1991, 1998 and 2001, in public care. The domestic authorities based their decision on a finding that the applicants' lack of financial means and personal qualities endangered their children's life, health and moral upbringing. Notably they were unable to provide them with proper nutrition, clothing, hygiene and health care or to ensure that they adapt in a social and educational context. The applicants relied in particular on Articles 6 (right to a fair trial) and 8 (right to respect for private and family life).

The Court doubted the adequacy of the evidence on which the authorities had based their finding that the children's living conditions had in fact been dangerous to their life and health. The judicial authorities had only examined those difficulties which could have been overcome by targeted financial and social assistance and effective counselling and had not apparently analysed in any depth the extent to which the applicants' irremediable incapacity to provide requisite care had been responsible for the inadequacies of their children's upbringing. Indeed, as regards parental irresponsibility, no independent evidence (such as an assessment by a psychologist) had been sought to evaluate the applicants' emotional or mental maturity or motivation in resolving their household difficulties. Nor had the courts examined the applicants' attempts to improve their situation. Furthermore, the Court noted that at no stage of the proceedings had the children been heard by the judges. Moreover, not only had the children been separated from their family of origin, they had also been placed in different institutions. The Court therefore concluded unanimously that there had been a violation of Article 8 and awarded the applicants EUR 5,000, jointly, in respect of non-pecuniary damage. The Court held that there was no need to examine the complaint under Article 6 (right to a fair hearing). (The judgment is available only in English.)

Violation of Article 3 (treatment)

Violation of Article 13

Ukhan v. Ukraine (no. 30628/02)

The applicant, Ivan Dmytrovych Ukhan, is a Ukrainian national who was born in 1961 and lives in Nekhvoroshch (Ukraine).

Convicted in 1997 of inflicting grievous bodily harm and released on probation in June 2003, Mr Ukhan was re-arrested in October 2003 on suspicion of hooliganism. He was notably accused of beating two individuals, shooting two dogs, then, having gone into hiding, firing shots from an unregistered rifle in the direction of police officers who were trying to arrest him. He was subsequently convicted of that charge and sentenced to six-and-a-half years' imprisonment.

The case concerned his complaint about the conditions of his detention in the various penitentiaries, notably in the Cherkasy Regional Investigative Isolation Unit SIZO no. 30 and Stryzhavska penitentiary no. 81, in which he was held. In particular, he claimed that

inadequate medical supervision and treatment had resulted in an untreated head injury paralysing the left-hand side of his body. He also had a number of other chronic conditions which he had contracted or had been aggravated during the second period of his detention, notably by inadequate and delayed diagnosis and failure to attend to his basic needs including poor food and hygiene and lack of arrangements for his reduced mobility. He also alleged that he was ill-treated in police custody when re-arrested in October 2003 and sustained numerous injuries, including the one to his head. He relied on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy).

The Court noted that the applicant had not submitted any medical proof concerning the injuries he had sustained in October 2003, except for that of a fractured rib. Even assuming that the applicant's rib had been fractured during his arrest, the Court recalled that, according to the unchallenged findings of the prosecutor's office, the applicant had resisted arrest with the result that four police officers had had to resort to physical force to restrain him. The Court therefore declared that part of the applicant's complaint concerning ill-treatment in police custody inadmissible.

However, given the delays and inconsistencies in the diagnosis of the applicant's illnesses, the lack of a comprehensive approach to his medical supervision and treatment, and failure to ensure conditions reasonably adapted to the applicant's health-care needs, the Court considered that the Ukrainian authorities had subjected him to inhuman and degrading treatment. The Court therefore held unanimously that there had been a violation of Article 3 on account of the conditions of Mr Ukhan's detention in the Cherkasy SIZO and Stryzhavska penitentiary, and a further violation of Article 13 on account of lack of remedies in respect of his complaints about the conditions of his detention. The Court awarded Mr Ukhan EUR 6,000 in respect of non-pecuniary damage. (The judgment is available only in English.)

Repetitive cases

The following cases raise issues which have already been submitted to the Court.

Violation of Article 6 § 1 (fairness)
Violation of Article 1 of Protocol No. 1

Igor Kolyada v. Russia (no. 19097/04)
Kotlyarov v. Russia (no. 750/02)
Veselyashkin and Veselyashkina v. Russia (no. 5555/06)
Ziabreva v. Russia (no. 23567/06)

Violation of Article 6 § 1 (fairness)
Violation of Article 1 of Protocol No. 1
Violation of Article 13

Sladkov v. Russia (no. 13979/03)

Violation of Article 1 of Protocol No. 1

Samoylenko and Polonska v. Ukraine (no. 6566/05)

The Court found the above violations in these six cases concerning the domestic authorities' failure to enforce final judgments in the applicants' favour in good time or at all. The Court declared inadmissible the remainder of the application in the case of *Samoylenko and Polonska*.

Length-of-proceedings case

In the following case, the applicant complained in particular about the excessive length of (non-criminal) proceedings.

Violation of Article 6 § 1 (length)

Dimitrievski v. “the former Yugoslav Republic of Macedonia” (no. 26602/02)

These summaries by the Registry do not bind the Court. The full texts of the Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.