

Press release issued by the Registrar

**Chamber judgments concerning
Croatia, Luxembourg, Russia,
“the former Yugoslav Republic of Macedonia” and Ukraine**

The European Court of Human Rights has today notified in writing the following 17 Chamber judgments, none of which are final¹.

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

Violation of Article 10

Godlevskiy v. Russia (application no. 14888/03)

The applicant, Gennadiy Vasilyevich Godlevskiy, is a Russian national who was born in 1958 and lives in Oryol. At the relevant time he was a journalist and editor-in-chief of the *Orlovskiy Meridian* newspaper.

In March 2001 Mr Godlevskiy published an article in the *Orlovskiy Meridian* concerning a criminal investigation launched by the Oryol Regional Prosecutor’s office into the activities of certain officers from the region’s anti-narcotics unit. He alleged in particular that those officers had discontinued prosecution of drug-dealers in order to share the profits from drug sales and that they were therefore partly responsible for the failure to stamp out drug dealing in the region. Subsequently the officers of the Oryol anti-narcotics unit filed a civil defamation action against the applicant and in October 2002 the domestic courts, finding that the applicant had failed to prove that the information published in his article had been true, ordered the newspaper to publish a rectification and each plaintiff to be paid 5,000 Russian roubles (RUR) (approximately 200 euros (EUR)). That judgment was upheld on appeal.

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicant complained about the defamation proceedings against him.

The European Court of Human Rights found in particular that the applicant’s article had not mentioned any of the plaintiffs by name but referred collectively to “the police” or “the anti-

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.

narcotics unit”. Nor did the applicant cite any confidential information with regard to the investigation or the ongoing criminal proceedings. Indeed, the publication, referring to publically available material from the investigation and an official document showing the numbers of deaths by overdose in the region, had been a fair comment on a matter of evident public concern and had not been a gratuitous attack on the reputation of named police officers. Consequently, the Court concluded that the publication had not exceeded the acceptable limits of criticism and that the interference with the applicant’s right to freedom of expression had not been “necessary in a democratic society”. Accordingly, the Court held unanimously that there had been a violation of Article 10 of the Convention. Mr Godlevskiy was awarded EUR 1,000 in respect of non-pecuniary damage. (The judgment is available only in English.)

Violation of Article 6 §§ 1 and 2 (fairness)

(1st applicant) Violation of Article 8

(3rd applicant) Violation of Article 1 of Protocol No. 1

Khuzhin and Others v. Russia (no. 13470/02)

The applicants are three brothers who are Russian nationals: Amir Gilvanovich Khuzhin who was born in 1975; his twin brother, Damir Gilvanovich Khuzhin, now deceased; and, Marat Gilvanovich Khuzhin who was born in 1970. The surviving brothers live in Glazov (Russia).

The three brothers were arrested in April 1999 and subsequently charged with kidnapping and torture. They were accused of having abducted a vagrant, who they had forced into physical labour in exchange for extremely low pay and whom they had beaten and tortured with electric wires when he had attempted to escape. A few days before their trial in July 1999, a national television channel broadcast a talk show during which three prosecution officials discussed in detail the brothers’ case. One of the officials in particular referred to them as hardened criminals and that the “crime” they had committed was characteristic of their “cruelty and meaningless brutality”. A local newspaper, *Kalina Krasnaya*, also subsequently published an article about the affair. The brothers lodged several complaints about the press coverage of the proceedings against them, without success. All three brothers also brought a civil defamation action against the author of the article in the *Kalina Krasnaya*. That claim was dismissed without the applicants’ or their representative’s presence during the hearings as Russian domestic law did not provide for convicted persons to be brought from correctional colonies to the place where their civil claim was being heard and as, in protest against that practice, the applicants’ representative refused to participate. Ultimately the brothers were found guilty as charged in March 2001. Marat Khuzhin was sentenced to five years and one month’s imprisonment and his twin brothers to seven years in a high-security colony.

The case concerned, in particular, the applicants’ complaints: that the statements made by the prosecution authorities during the talk show were prejudicial for their trial; about Amir Khuzhin’s photograph being broadcast on television; about the fact that they were not allowed to take part in the civil proceedings to which they were parties; and, the impounding of Marat Khuzhin’s van upon his arrival for questioning. They relied on Article 6 § 1 (right to a fair trial), Article 6 § 2 (presumption of innocence), Article 8 (right to respect for private and family life and correspondence) and Article 1 of Protocol No. 1 (protection of property). Further relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants also complained about their conditions of transport and detention, and notably about an incident on 26 December 2002 when, while waiting to be transported to a correctional colony, they were exposed to the extreme cold without being provided with warm clothing.

The Court noted that it was not in dispute between the parties that on 26 December 2002 the applicants had refused to put on the clothing offered to them by wardens. There was no evidence that that clothing, although old and worn, had been unacceptable to wear or could not provide protection from the cold. The Court therefore concluded that the domestic authorities had not failed in their duty to provide protection against inclement weather and declared that part of the applicants' complaint inadmissible. It also declared inadmissible the remainder of the applicants' complaints under Article 3.

The Court further considered that the three prosecution officials had stated as an established fact that the applicants had committed a crime; they had not even mentioned that the applicants had denied their involvement. Those statements had therefore amounted to a declaration of the applicants' guilt and had prejudged the assessment of the facts of the case by the competent judicial authority, thereby encouraging the public to believe the applicants were guilty before it had been proven according to law. The Court therefore held unanimously that the applicants' presumption of innocence had been breached, in violation of Article 6 § 2.

The Court also found that the domestic courts' refusal to grant the applicants leave to appear at the hearings concerning their civil claim had been prejudicial, no legal possibilities having been considered to ensure their effective participation. Nor had the proceedings been adjourned to give them the possibility of designating further representation. In those circumstances, the Court held unanimously that the applicants had been deprived of the opportunity to present their civil case effectively before the courts, in violation of Article 6 § 1.

Furthermore, the Court noted that the police had taken a passport photograph of Amir Khuzhin from the criminal case file and, without his consent, had given it to a journalist. Showing his photograph had not been necessary to determine his whereabouts as he was not a fugitive from justice; nor had it been necessary to reinforce the public character of the judicial proceedings because at the time when the television show had been aired the trial had not yet begun. The Court did not therefore see any legitimate aim for the interference with Amir Khuzhin's right to respect for his private life and, bearing in mind that the Government had not put forward any justification for that interference, it held unanimously that there had been a violation of Article 8.

Lastly, as concerned the impounding of the van, the Court observed that the charges of torture or kidnapping against Marat Khuzhin had not carried a confiscation measure as a penal sanction. Nor had any civil claim been brought in criminal proceedings. It followed that neither of the two grounds necessary under domestic law for making a confiscation order had been applicable in respect of Marat Khuzhin's vehicle. The Court therefore held that there had been a violation of Article 1 of Protocol No. 1 on account of the unlawful impounding of Marat Khuzhin's vehicle. The applicants' claim for just satisfaction was rejected. (The judgment is available only in English.)

Violation of Article 38 § 1 (a)
(Applicants' relatives) 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

Magomed Musayev and Others v. Russia (no. 8979/02)

The applicants are four Russian nationals who live in Raduzhnoye (the Chechen Republic): Magomed Musayev, the father of Said-Rakhman Musayev, born in 1984; Zargan Mitayeva, the mother of Odes Mitayev, born in 1972; and, Magomed Magomadov and Aynap Magomadova, the brother and mother of Magomed Magomadov, born in 1969.

On 10 December 2000 a large-scale sweeping operation took place in Raduzhnoye and the neighbouring district during which 21 men were detained, three of whom were the applicants' relatives. The applicants discovered the bodies of the three men on 21 February 2001 at a burial site in Zdorovye, near to the Khankala military base. 50 other bodies were also found at the site, which was only accessible with a military escort. Documents subsequently issued by a medical clinic and Grozny civil registration office certified that Said-Rakhman Musayev and Odes Mitayev had died from "numerous gunshot and knife wounds to the body and head".

The case concerned the applicants' allegation that their three relatives were killed after being abducted by Russian servicemen on 10 December 2000 and that the domestic authorities failed to carry out an effective investigation into their allegation. They relied on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair hearing) and 13 (right to an effective remedy).

The Court held unanimously that there had been a failure by the State to comply with Article 38 § 1 (a) (obligation to furnish necessary facilities for the examination of the case) in that the Government refused to submit documents requested by the Court.

The Court noted that the applicants' version of events was supported by witness statements, notably by men who had been detained on the same day as the applicants' relatives but had subsequently been released. The abductors had allegedly acted in a manner similar to that of a security operation: they had arrived in a large group, wearing camouflage uniforms, spoken Russian among themselves and to residents, rounded up a large number of men and taken them to a prepared location where each detainee had been questioned about their alleged liaisons with illegal fighters. The abductors had used military vehicles such as APCs and Ural trucks, which could not have been available to paramilitary groups. The Court found that the fact that a large group of armed men in uniforms, equipped with military vehicles proceeded in broad daylight to check identity documents and to arrest over 20 persons in a town area strongly supported the applicants' allegation that these were Russian servicemen.

Drawing inferences from the Government's failure, despite specific requests from the Court, to submit documents from the criminal investigation file which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considered that Said-Rakhman Musayev, Odes Mitayev and Magomed Magomadov had been arrested on 10 December 2000 by Russian servicemen during an unacknowledged security operation.

There had been no news of the applicants' relatives between their arrest and the discovery of their bodies. The Government had not disputed the fact that the men had been found within the security zone of the military base in Khankala or that a military escort had been necessary to access the site. Nor, most disturbingly, had they disputed the fact that the three bodies had been discovered at a burial site containing over 50 bodies, some bearing traces of summary executions and some identified as having been detained by Russian servicemen. The Court

therefore considered that, as in a number of other “disappearance” cases before it, the facts supported the assumption that those detainees had been extra-judicially executed by agents of the State. In those circumstances, the Court concluded that Russia had been responsible for the deaths of the applicants’ three relatives and, noting that the authorities had not justified the use of lethal force by their agents, the Court held unanimously that there had been a violation of Article 2 in respect of Said-Rakhman Musayev, Odes Mitayev and Magomad Magomadov.

The Court also noted that the investigation had only been launched almost two-and-half months after the arrest and, according to the limited information available, had not made any progress in almost seven years. The Court therefore also held unanimously that there had been a further violation of Article 2 concerning the Russian authorities’ failure to conduct an effective investigation into the circumstances in which the applicants’ relatives had been killed.

Furthermore, the Court considered that the applicants had suffered distress and anguish as a result of the disappearance of their relatives and their inability to find out what had happened to them during the period when they had been missing. The manner in which their complaints had been dealt with by the authorities had to be considered as inhuman treatment, in violation of Article 3. It did not, however, find that it had been established exactly how the applicants’ relatives had died and whether they had been subjected to ill-treatment and therefore held that there had been no violation of Article 3 in that respect.

The Court further found that Said-Rakhman Musayev, Odes Mitayev and Magomad Magomadov 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.

Lastly, the Court held unanimously that there had been a violation of Article 13 in conjunction with Article 2.

The Court awarded EUR 10,000 to Zargan Mitayeva in respect of pecuniary damage. In respect of non-pecuniary damage, the Court awarded EUR 35,000, each, to Magomed Musayev and Zargan Mitayeva. Magomed Magomadov and Aynap Magomadova made no claims for damages in respect of the killing of their relative. The applicants were awarded EUR 9,519 (less EUR 850 received by way of legal aid from the Council of Europe) for costs and expenses. (The judgment is available only in English.)

Violation of Article 11

Sergey Kuznetsov v. Russia (no. 10877/04)

The applicant, Sergey Vladimirovich Kuznetsov, is a Russian national who was born in 1957 and lives in Yekaterinburg (Russia).

On 25 March 2003 Mr Kuznetsov and a few others held a picket in front of the Sverdlovsk Regional Court to attract public attention to violations of the right of access to a court. The applicant having notified the authorities of the picket eight days beforehand, the police were ordered to maintain public order and traffic safety during the event. The case concerned the applicant’s complaint about his subsequent fine for: sending the picket notice too late; obstructing the passageway to the court building; and, distributing publications which alleged

that the Regional Court was corrupt and called for the dismissal of its President. He relied on Articles 10 (freedom of expression) and 11 (freedom of assembly and association).

Firstly, the Court noted that the applicant had submitted the picket notice eight days, instead of ten days as stipulated in the applicable regulations, before the event. It considered, however, that to be a merely formal breach of a time-limit. Moreover, that two-day difference did not prevent the authorities from making the necessary preparations for the picket. Secondly, no complaints had been received from visitors, judges or court employees about the alleged obstruction of entry to the courthouse and the applicant had cooperated with the authorities when asked to move. Thirdly, however insulting the President of the Regional Court might have considered the publications distributed by the applicant during the picket and the call for his dismissal, that documentation had not contained any defamatory statements, incitement to violence or rejection of democratic principles. The Court therefore concluded that the Russian authorities had not provided “relevant and sufficient” reasons to justify the interference with the applicant’s right to freedom of expression and assembly and held unanimously that there had been a violation of Article 11 interpreted in the light of Article 10. Mr Kuznetsov was awarded EUR 1,500 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 1 of Protocol No. 1

Vučak v. Croatia (application no. 889/06)

The Court found the above violation in this case concerning the applicants’ inability to regain possession of their house for a prolonged period of time.

Violation of Article 6 § 1 (fairness)

Violation of Article 1 of Protocol No. 1

Violation of Article 13

Bogunov v. Russia (no. 27995/05)

Two violations of Article 6 § 1 (fairness)

Two violations of Article 1 of Protocol No. 1

Ignatovich v. Russia (no. 19813/03)

Violation of Article 6 § 1 (fairness)

Violation of Article 1 of Protocol No. 1

Kardashin and Others v. Russia (no. 29063/05)

Kazantseva v. Russia (no. 26365/05)

Rodichev v. Russia (no. 3784/04)

Tulskaya v. Russia (no. 43715/05)

Two violations of Article 6 § 1 (fairness and length)

Violation of Article 1 of Protocol No. 1

Suslin v. Russia (no. 34938/04)

The Court found the above violations in these seven cases concerning the domestic authorities’ failure to enforce final judgments in the applicants’ favour in good time or at all.

In the case of *Ignatovich*, the Court found a further violation of each Article concerning the quashing of a final judgment in favour of the applicant by way of supervisory review. In the case of *Suslin*, it also found a further violation of Article 6 § 1 on account of the excessive length of a set of civil proceedings aimed at determining the rate of the applicant's monthly disability allowance.

Length-of-proceedings cases

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

Violation of Article 6 § 1 (length)
Violation of Article 13

Oreb v. Croatia (no. 9951/06)

Nikolov v. "the former Yugoslav Republic of Macedonia" (no. 13904/02)

Violation of Article 6 § 1 (length)

Bodeving v. Luxembourg (no. 40761/05)

Guber v. Russia (no. 34171/04)

Yerkimbayev v. Russia (no. 34104/04)

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>).

Press contacts

Adrien Raif-Meyer (telephone: 00 33 (0)3 88 41 33 37)

Tracey Turner-Tretz (telephone: 00 33 (0)3 88 41 35 30)

Sania Ivedi (telephone: 00 33 (0)3 90 21 59 45)

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.