

Press release issued by the Registrar

**Chamber judgments concerning
Croatia, Georgia, Italy, Latvia, Luxembourg, Norway, Russia, and Turkey**

The European Court of Human Rights has today notified in writing the following 25 Chamber judgments, none of which is final¹.

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

FC Mretebi v. Georgia (no. 38736/04)

Violation of Article 6 § 1 (fairness)

The applicant, FC Mretebi, is a football club which was founded on 3 February 1988 in Tbilisi.

In July 1992 the applicant club and the football club Dinamo FC, both members of the Georgian Football Federation (GFF), agreed on the transfer of a footballer to Dinamo FC. Following the footballer's transfer from Dinamo FC to an English club, Dinamo FC owed the applicant 691,000 euros (EUR), but never paid that sum. After years of proceedings against Dinamo FC before the *Fédération Internationale de Football Association* (FIFA), the applicant was ultimately awarded EUR 236,000 in March 2000. In January 2001, Dinamo FC fully paid the debt. Considering that that amount was insufficient, the applicant brought proceedings for damages against the GFF before the domestic courts. Those proceedings were unsuccessful, as the Supreme Court refused to grant the applicant's request for exemption from the court fees. According to the applicant, its inability to receive proper compensation from Dinamo FC, as well as the high costs it had incurred in the domestic and international proceedings against Dinamo FC and the GFF, had resulted in its financial collapse.

Relying in particular on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, the applicant complained that it was denied access to a court.

The European Court of Human Rights observed in particular that the Supreme Court failed to secure a proper balance between, on the one hand, the interests of the State in securing reasonable court fees and, on the other hand, the interests of the applicant in vindicating its claim through the courts. It concluded that there had been an unjustified denial of access to

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.

court and therefore held by four votes to three that there had been a violation of Article 6 § 1. (The judgment is available only in English.)

Rizhamadze v. Georgia (no. 2745/03)

No violation of Article 6 § 1 (fairness)

The applicant, Avtandil Rizhamadze, is a Georgian national who was born in 1970 and lives in Tbilisi.

Mr Rizhamadze worked as an officer for the Customs Department, an agency of the Ministry of Finance. In June 1995, he was discharged from his duties by an administrative order which noted that he was to be transferred to another customs office. For the next six years, he complained on numerous occasions before various governmental agencies about the inability to continue his service. In a letter of 21 March 2001, the Customs Department informed the applicant that, after its reorganisation in June 1995, staff had been significantly reduced and considering that he had continuously been absent from the old customs office without authorisation, the administration had decided – under the provisions of the Labour Code – not to employ him any longer. In May 2001 the applicant sued the Customs Department for unfair dismissal, requesting reinstatement to his position and compensation for loss of salary. His action was ultimately rejected by local courts as time-barred.

Relying on Article 6 § 1 (right to a fair hearing), the applicant complained, in particular, that the Supreme Court had not held an oral hearing for his cassation claim.

The Court observed that there had been nothing in the case file to suggest that the written procedure offered to the applicant by the Supreme Court instead of an oral hearing either lacked transparency or disclosed other reasonable grounds to doubt its fairness. It therefore held unanimously that there had been no violation of Article 6 § 1. (The judgment is available only in English.)

Zaicevs v. Latvia (no. 65022/01)

No violation of Article 6 § 1 (fairness)

Violation of Article 2 of Protocol No. 7

The applicant, Vasilijš Zaicevs, is a former national of the ex-USSR and a “permanently resident non-citizen” of Latvia. He was born in 1955 and lives in Liepāja (Latvia).

Mr Zaicevs is president of the non-governmental organisation *Aizstāvis* (“Defender”) the aim of which, according to its articles of association, is to protect the rights of various categories of vulnerable persons. On 20 July 2000 the applicant accompanied Mrs N.L. to Liepāja District Court so that she could obtain from the judge, Mrs M.J., a copy of the record of the hearing held a few days previously in her civil case. The judge refused to issue them with the document and ordered them to leave her office. M.J. subsequently alleged in an administrative offence report that the applicant had burst into her office uninvited and had rudely demanded information to which he was not entitled, in breach of the rules of conduct within the precincts of the court. By a final order of 9 August 2000 the applicant was sentenced to three days’ “administrative detention” for contempt of court. After serving his sentence he wrote several letters to the public prosecutor’s office criticising the proceedings leading to his conviction. He received no reply.

The applicant alleged in particular that the proceedings leading to his conviction had breached the fundamental guarantees of Article 6 (right to a fair hearing). Relying also on Article 2 of Protocol No. 7 (right of appeal in criminal matters), he complained of the lack of a remedy in Latvian law by which to complain of his conviction.

The Court considered that, taken overall, the proceedings at issue could not be said to have been “unfair”, and held unanimously that there had been no violation of Article 6. It further observed that the Latvian Constitutional Court, in its judgment of 20 June 2002, had found the second paragraph of Article 279 of the Administrative Offences Code to be contrary, among other things, to Article 2 of Protocol No. 7, and had declared it null and void. However, the Court took the view that that change had had no impact on the situation of the applicant, who had been exposed to the full effects of the provision in question. It therefore held unanimously that there had been a violation of Article 2 of Protocol No. 7. The Court awarded Mr Zaicevs EUR 1,000 for non-pecuniary damage and EUR 200 for costs and expenses. (The judgment is available only in French.)

No violation of Article 6 § 1 (fairness)

Violation of Article 6 § 1 (length)

Electro Distribution Luxembourgeoise (E.D.L) S.A. v. Luxembourg (no. 11282/05)

The applicant company, Electro Distribution Luxembourgeoise (E.D.L.) S.A., is a Luxembourg company which has its registered office in Leudelange (Luxembourg).

On 21 January 1993 the applicant company lodged a complaint against one of its employees, S.P., for forgery and theft by a member of the household, or ordinary theft, and for misappropriation and fraud. On 7 July 2005, following proceedings which lasted for over twelve years, the Committals Division of the District Court discontinued the proceedings on the ground that the investigation in the case had not yielded sufficient evidence to warrant committing S.P. for trial.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), the applicant company complained that its right of access to a court had been violated and alleged that the length of the proceedings had exceeded a “reasonable time”.

With regard to the complaint concerning the right of access to a court, the Court considered that it was clear from the case file that the applicant itself was responsible for the situation of which it complained. It held unanimously that there had been no violation of Article 6 § 1 under that head. However, it also held unanimously that there had been a violation of Article 6 § 1 on account of the excessive length of the proceedings (twelve years and five months). It awarded the applicant company EUR 10,000 in respect of non-pecuniary damage. (The judgment is available only in French.)

Fourth applicant: violation of Article 6 § 1 (fairness)

No violation of Article 6 § 1 (fairness)

Ekeberg and Others v. Norway (no. 11106/04, 11108/04, 11116/04, 11311/04 and 13276/04)

The applicants, Roger Ekeberg, Hans Mikkelsen, Morten Hoelstad, Roger Elvsveen and Torkjel Alsaker, are Norwegian nationals who were born in 1960, 1968, 1967, 1963 and 1960, respectively. The first four applicants were members of a motor cycle club called “Screwdrivers”, which was based in Hamar (Norway) and was, at the relevant time, a hang-out for the Hells Angels. The fifth applicant was a member of the Hells Angels in Oslo.

On 4 June 1997 the applicants detonated explosives hidden in a Volkswagen Transporter in order to blow up parts of a club house belonging to another motor cycle club called *Bandidos*. The force of the explosion killed the driver of a passing car and caused damage amounting to 2,000,000 Norwegian Krone (approximately EUR 251,125). They were subsequently

charged, in particular, with instigating or aiding and abetting in causing a fire or explosion which resulted in loss of human life and extensive material damage and with aggravated offences involving serious material damage. In a judgment of 24 March 2003, the High Court convicted the applicants of those charges. The first second and third applicants were sentenced to 6 years' imprisonment and the fourth and fifth applicants to 12 and 16 years, respectively.

Relying on Article 6 § 1 (right to a fair trial), the applicants complained that one of the judges, Judge G., had lacked the requisite impartiality in the trial before the High Court because she had taken part in the decision of 1 July 2002 to extend, under the Code of Criminal Procedure, the fourth applicant's detention. The remaining applicants claimed that, even though only the fourth applicant was directly concerned, the decision of 1 July 2002 had contained some general comments about the motor cyclist milieu to which they all belonged. They also all alleged that that shortcoming had been aggravated by the fact that one of the members of the jury, juror W., at the High Court trial had been disqualified as she had given a witness statement to the police concerning the case.

The Court observed that the decision to extend the fourth applicant's detention had been taken in accordance with the Code of Criminal Procedure which required a definite suspicion that he had committed the offence. It further observed that, without the professional judges' endorsement, the fourth applicant could not have been convicted by the High Court. That made tenuous the difference between Judge G.'s role in deciding about the extension of the fourth applicant's detention and then assessing whether to endorse the High Court jury's verdict. Furthermore, Judge G. also took part in the sentencing of the fourth applicant. The Court therefore found that the fourth applicant had legitimate grounds for fearing that the High Court had lacked the requisite impartiality and held, unanimously, that there had been a violation of Article 6 § 1. However, the Court found that Judge G.'s statements about the motor cyclist milieu had not included an assessment about whether there was a definite suspicion that the remaining applicants had committed the offence, but had referred to a different issue, that is to say whether the fourth applicant's release would have caused a public outcry. Therefore it found that the remaining applicants' fears could not be objectively justified. As concerned juror W's participation, the Court found that the nature, timing and short duration of her involvement in the proceedings could not cause the applicants to have doubts as to the impartiality of the jury. The Court therefore held, by four votes to three, that there had been no violation of Article 6 § 1 concerning juror W's participation. The Court held unanimously that there was no call to award the fourth applicant any sum for just satisfaction. (The judgment is available only in English.)

Chemodurov v. Russia (no. 72683/01)

Violation of Article 10

The applicant, Viktor Vladimirovich Chemodurov, is a Russian national who was born in 1951 and lives in Kursk (Russia).

The case concerned Mr Chemodurov's complaint about defamation proceedings brought against him following an article he wrote which was published in July 2000 in the *Kurskiy Vestnik* newspaper. The article criticised Governor Rutskoy and what he considered to be his "abnormal" reaction to allegations concerning misappropriation of regional funds. In October 2000 the domestic courts, although satisfied with the accuracy of the facts in the article, held that the use of the word "abnormal" was insulting and damaging to the Governor's reputation and ordered the applicant to pay the Governor compensation.

He relied on Article 10 (freedom of expression).

The Court considered that the term “abnormal” should have been understood in its context, that is to say the description of a State official’s conduct which had not appeared appropriate in the circumstances. Indeed, the applicant had made it clear in his article that he had been referring to the Governor’s conduct and not his private life or mental health. Given the role of journalists to provide information and ideas of concern to the public, even when they might offend, shock or disturb, the Court found that using the word “abnormal” had not exceeded the acceptable limits of criticism. Moreover, as a prominent politician, the Governor should have displayed a greater degree of tolerance to criticism. The Court concluded that the domestic courts’ decisions had not been based on an acceptable assessment of the relevant facts and that the interference with the applicant’s 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 and awarded the applicant EUR 50 for pecuniary damage and EUR 1,026 for costs and expenses. (The judgment is available only in English.)

Dyuldin and Kislov v. Russia (no. 25968/02)

Violation of Article 10

The applicants, Viktor Gavrilovich Dyuldin and Aleksandr Ivanovich Kislov, are Russian nationals who were born in 1944 and 1948, respectively. They live in Penza (Russia).

The case concerned the applicants’ complaint about proceedings brought against them following the publication of an open letter in August 2000 in the *Novaya birzhevaya gazeta* newspaper. The letter was written following a round table between regional editors-in-chief, journalists and human-rights activists. It criticised the Penza Regional Government, alleging that it was hindering President Putin’s policy to curb corruption and expressed the feeling that the media were being repressed in order to deter them from exposing corruption among State officials. In May 2001 the domestic courts held that certain extracts of the letter were untrue and damaged the honour and dignity of members of the regional authorities. The newspaper and the applicants were ordered to pay compensation. The newspaper was further ordered to publish a rectification.

They relied on Article 10 (freedom of expression).

The Court reiterated that one of the fundamental requirements governing defamation was that a particular person be referred to. The only person specifically identified in the letter had been the regional governor, who did not actually bring defamation proceedings. If State officials were allowed to sue for defamation concerning any critical statement about State affairs, journalists would be inundated with lawsuits. That would result in an excessive burden being placed on the media and a reluctance to carry out their role of public watchdog. Furthermore, the Court considered the expressions used in the letter to have been value judgments whereas the domestic courts found them uniformly to have been statements. Value judgments were not susceptible of proof but had to be based on sufficient facts. The Court noted that the letter had been the result of a collective effort by a representative selection of experts who had first-hand knowledge of the media. It further noted with concern that the proof required to justify referring to the governor’s policy as “destructive” had been a scientific assessment of the social and economic development of the region. The Court stressed that the degree of precision required of a journalist when expressing an opinion on a matter of public concern could hardly be compared with that of an economic forecast. Besides, the value judgment had been made in the course of a lively political debate where elected officials and journalists should have enjoyed wide freedom to criticise local authority.

The Court therefore concluded that the interference with the applicants' freedom of expression had not been "necessary in a democratic society" and held unanimously that there had been a violation of Article 10. The applicants were awarded EUR 1,000 for non-pecuniary damage and EUR 5 for costs and expenses. (The judgment is available only in English.)

Bayam v. Turkey (no. 26896/02)

Violation of Article 5 § 3

The applicant, Rıfat Bayam, is a Turkish national, who was born in 1975. He was detained in Batman Prison at the time of his application to the Court.

In December 1993 Mr Bayam was taken into police custody on suspicion of being a member of an illegal organisation, the PKK (the Kurdistan Workers' Party). Ultimately, he was convicted in September 2000 and sentenced to 12 years and six months' imprisonment.

Relying, in particular, on Article 5 § 3 (right to liberty and security) and Article 6 § 1 (right to a fair trial within a reasonable time), Mr Bayam complained of the excessive length of his detention on remand.

The Court held unanimously that there had been a violation of Article 5 § 3 on account of Mr Bayam's pre-trial detention having lasted almost five years and three months. The applicant was awarded EUR 4,000 for non-pecuniary damage and EUR 1,000 for costs and expenses. The remainder of the application was declared inadmissible. (The judgment is available only in English.)

Violation of Article 6 § 1 (fairness)

Karatepe v. Turkey (no. 41551/98)

No violation of Article 10

The applicant, Şükrü Karatepe, is a Turkish national who was born in 1949 and lives in Kayseri (Turkey).

The applicant was a member of the Refah Partisi (Prosperity Party) and was mayor of Kayseri at the material time. In an indictment dated 25 July 1997 the public prosecutor at Ankara State Security Court charged the applicant with incitement to hatred and hostility on the basis of a distinction founded on religion, on account of speeches he made in October and November 1996. On 9 October 1997 he was sentenced to one year's imprisonment and payment of a fine. The judgment was upheld by the Court of Cassation. The applicant was removed from his post as mayor in February 1998 and was imprisoned on 24 April 1998, before being granted conditional release on 17 September 1998.

Relying on Article 6 § 1 (right to a fair trial), the applicant alleged that his case had not been heard by an independent and impartial tribunal on account of the presence of a military judge on the bench. He also complained, relying in particular on Article 10 (freedom of expression), that his conviction had infringed his right to freedom of expression.

As to the complaint under Article 6 § 1, the Court reached the same findings as in similar cases raising the same issues under the Convention, and held unanimously that there had been a violation. It further considered that the severity of the penalty imposed on the applicant could not be said to be disproportionate to the legitimate aim pursued, namely the prevention of public incitement to crime. It observed that the interference complained of had been in accordance with Article 10 and held by six votes to one that there had been no violation of that Article. The Court held unanimously that the finding of a violation constituted in itself

sufficient just satisfaction for the non-pecuniary damage sustained by Mr Karatepe and awarded him EUR 500 for costs and expenses. (The judgment is available only in French.)

Kozacıoğlu v. Turkey (no. 2334/03)

Violation of Article 1 of Protocol No. 1

The applicant, İbrahim Kozacıoğlu, died in 2005. His heirs decided to continue with the application before the Court.

In April 2000 a property belonging to the applicant was expropriated by the Ministry of Culture on the ground that it had been classified as a “cultural asset”. The applicant was paid approximately EUR 65,326 on the transfer of the property. In October 2000 the applicant lodged an application for increased compensation, requesting that a new panel of experts reassess the property and take into account its historical value. He argued in particular that the building in question featured on the Council of Europe’s inventory of the cultural and natural heritage, and claimed approximately EUR 1,728,075 in additional compensation. Two different panels of experts found in June 2001 that, in view of the nature of the property, its value should be increased by 100%. However, in May 2002, the domestic courts awarded the applicant a final sum of approximately EUR 45,980 in additional compensation.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained in particular of an infringement of his right to the peaceful enjoyment of his possessions.

The Court noted that the historical value of the expropriated property had not been taken into account in calculating the compensation payable, either when the compensation for expropriation had been determined or during the proceedings concerning increased compensation. It took the view that the complete failure to take that into consideration had deprived the applicant of the value attributable to the expropriated property and held, by four votes to three, that there had been a violation of Article 1 of Protocol No. 1. It also found that the judgment constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant and awarded him EUR 75,000 for pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in French.)

Violation of Article 6 § 1 (fairness)

Ulusoy v. Turkey (no. 52709/99)

Violation of Article 10

The applicant, Ziya Ulusoy, is a Turkish national who was born in 1953 and lives in Tunceli (Turkey).

The case concerned the applicant’s complaint about proceedings brought against him following the publication in July 1993 of an article he wrote concerning a hotel being set on fire in Sivas in which 37 people were killed. He criticised the armed forces’ indifference to the incident as well as Turkey’s policies with regard to the Kurdish problem. In April 1997, the applicant was convicted and sentenced to one year and four months’ imprisonment and a fine. The domestic courts found, in particular, that the applicant referring to parts of Turkish territory as “Kurdistan” and to terrorist activities as a “national liberation struggle” represented separatist propaganda which threatened national unity and security. Ultimately, in November 1999, the applicant’s prison sentence was suspended following the introduction of a law (Law no. 4454) concerning pending cases and penalties in media-related cases.

He relied, in particular, on Article 10 (freedom of expression). Also relying on Article 6 § 1 (right to a fair hearing), Mr Ulusoy complained that his case had not been heard by an

independent and impartial court, because a military judge had sat on the bench of the State Security Court which tried him.

As in a number of similar cases, the Court found that the applicant's concerns regarding the independence and impartiality of the security court could be regarded as objectively justified. It therefore held unanimously that there had been a violation of Article 6 § 1.

Similarly the Court reached the same finding as in other cases raising the same issues under Article 10. Having examined the reasons given in the security court's judgment, it did not consider them sufficient to justify the interference with the applicant's right to freedom of expression. Taken as a whole, the applicant's article did not amount to hate speech and did not encourage violence, armed resistance or insurrection. The Court therefore concluded that the applicant's conviction had been disproportionate to the aims pursued and had not been "necessary in a democratic society". Accordingly, there had been a violation of Article 10.

The applicant failed to submit a claim for damages within the required time limit and so the Court made no such award. Nevertheless, it considered that where an individual, as in the applicant's case, had been convicted by a court which had not met the Convention requirements of independence and impartiality, a retrial or a reopening of the case, if requested, represented, in principle, an appropriate way of redressing the violation. (The judgment is available only in English.)

Repetitive cases

In the following cases the Court has reached the same findings as in similar cases raising the same issues under the Convention:

Casotti v. Italy (no. 26041/04)
Scorziello v. Italy (no. 22689/04)

Violation of Article 8

Maugeri v. Italy (no. 13611/04)

Violation of Article 8
Violation of Article 13

Bolyukh v. Russia (no. 19134/05)
Kozeyev v. Russia (no. 934/03)

Two violations of Article 6 § 1 (fairness)
Two violations of Article 1 of Protocol No. 1

Somchenko v. Russia (no. 33986/02)

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

Svitich v. Russia (no. 39013/05)

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

Ak v. Turkey (no. 27150/02)

Violation of Article 6 § 1 (length)

Violation of Article 6 § 1 (length)

Birtan Güven and Others v. Turkey (no. 37625/03) *Violation of Article 6 § 1 (fairness)*
Violation of Article 13

Evci v. Turkey (no. 34026/02) *Violation of Article 1 of Protocol No. 1*

Length-of-proceedings cases

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

Jakupović v. Croatia (no. 12419/04) *Violation of Article 6 § 1 (length)*
Skokandić v. Croatia (application no. 43714/02)
Hasan Genç v. Turkey (no. 26576/02)

Gragnano v. Italy (no. 23901/03) *Violation of Article 6 § 1 (length)*
No violation of Article 13

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.