

Press release issued by the Registrar

Chamber judgments concerning the Czech Republic, Hungary, Italy, Moldova, Poland, Switzerland, Turkey and Ukraine

The European Court of Human Rights has today notified in writing the following 17 Chamber judgments, none of which is final.¹

Repetitive cases (in which the Court has reached the same findings as in similar cases raising the same issues under the European Convention on Human Rights) can be found at the end of this press release.

Miklós v. Hungary (application no 21742/02)

Violation of Article 6 § 1

The applicant, Imre Miklós, is a Hungarian national aged 59 and living in Tököl. He is a bank manager.

In November 1994 criminal proceedings were instituted against the applicant, and in September 1996 he and two other individuals were charged with fraud and other offences.

Borsod-Abaúj-Zemplén County Regional Court held 38 hearings in the case between 1 April 1997 and 2 June 1999, when the applicant was convicted of aggravated mismanagement and sentenced to two years' imprisonment,

The applicant complained about the length of the criminal proceedings against him. He relied on Article 6 § 1 (right to a fair trial within a reasonable time).

The Court noted that the proceedings in question had lasted approximately six years and four months. Having regard to the circumstances of the case, it considered that such a length of time was excessive and failed to satisfy the "reasonable time" requirement. Accordingly, the Court concluded unanimously that there had been a violation of Article 6 § 1 of the Convention and awarded the applicant EUR 1,500 for non-pecuniary damage and EUR 500 for costs and expenses. (The judgment is available only in English.)

Savițchi v. Moldova (no. 11039/02)

Violation of Article 10

The applicant, Julieta Savițchi, is a Moldovan national aged 35 and living in Chișinău. She is a journalist.

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.

On 2 October 1999 the Russian language newspaper “The New Order” published an article entitled “Traffic Police – My Star” written by the applicant. A policeman named G.R. lodged a civil action for defamation against the applicant and the publishing office of the newspaper with the Centru District Court. Relying on Articles 7 and 7/1 of the Civil Code, he alleged that the article contained defamatory remarks about him.

The applicant and the newspaper stated that article simply retold the story of a man named Victor who was a victim of a road accident. Victor gave evidence to that effect. Furthermore they claimed that the article could not harm in any way G.R.’s reputation, particularly since his full name was not given.

In March 2000 the Centru District Court found in favour of G.R. and the newspaper lodged an appeal in cassation. The Court of Appeal quashed the previous judgments. It found only a limited number of statements in the article to be defamatory and untrue. The newspaper was ordered to publish an article retracting those statements and, along with the applicant, was ordered to pay damages to G.R. and to pay the court fees.

The applicant alleged that her right to freedom of expression had been violated as a result of judicial decisions in the defamation proceedings brought against her. She relied on Article 10 (freedom of expression).

The Court recalled that the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to debate matters of public interest and should not be envisaged unless there were particularly strong reasons for doing so. Bearing in mind the moderate language used by the applicant and the fact that it did not appear that she had acted in bad faith with the purpose of defaming G.R., the Court took the view that there were no particularly strong reasons for doing so.

The Court further considered that one of the statements found to be defamatory by the court could only be regarded as a value judgment and that the meaning of another phrase was ambiguous. However, the Court was ready to assume that the latter constituted a statement of fact and that the applicant had a duty to prove it was true.

In that respect the Court noted that the applicant tried to bring evidence by putting forward a witness, Victor. However, the national courts did not pay any attention to Victor’s testimony, treating it as irrelevant. In so doing the Moldovan courts deprived the applicant of the opportunity to provide the evidence to support her statements, as she was required to do by law. The Court therefore found that the courts had interfered with her right to freedom of expression in a manner which was not necessary in a democratic society.

Accordingly, the Court concluded that there had been a breach of Article 10 and awarded the applicant EUR 3,000 for pecuniary and non-pecuniary damage and EUR 1,500 for costs and expenses. (The judgment is available only in English.)

Violation of Article 5 §§ 1 and 4
Violation of Article 5 § 3(right to be brought promptly before a judge)
Violation of Article 5 § 3 (right to a trial within reasonable time or release pending trial)
Violation of Article 8

Bagiński v. Poland (no. 37444/97)

The applicant, Robert Bagiński, is a Polish national who was born in 1968 and lives in Wrocław, Poland.

In January 1994 the applicant was arrested and charged with forgery. He was released after 48 hours. In October 1994, after failing to respond to several police summonses, he was arrested and brought before the Wrocław District Prosecutor (*Prokurator Rejonowy*). He escaped from the prosecutor's office and was later re-arrested and charged with forgery, escaping from lawful custody and seven counts of burglary. He was detained in remand.

Despite his numerous applications for release, the applicant's detention on remand was extended several times. The courts justified his continued detention on the grounds that there was sufficient likelihood that the applicant had committed the crime, the seriousness of the offence, the need to secure the proper conduct of the criminal proceedings and the risk of the applicant absconding. The hearings held in connection with his requests for release were held *in camera* and neither the applicant, nor his lawyer could take part.

On 31 December 1996 the Regional Court made an application under Article 222 § 4 of the Code of Criminal Procedure to the Supreme Court (*Sąd Najwyższy*), asking it to prolong the applicant's detention until 24 June 1997. On 24 January 1997 the Criminal Chamber of the Supreme Court prolonged the applicant's detention but noted the application should have been lodged before 1 January 1997 (it was posted on 10 January). Without such an application, the order for his detention should have been quashed. It concluded that the applicant had been detained unlawfully.

On 22 December 1997 the applicant was released. He was later convicted as charged and sentenced to a term of imprisonment from which his pre-trial detention was deducted.

During his detention, the applicant and his mother's numerous requests to have visiting rights were rejected on account of the fact that she had been called as a witness by the prosecution. In 1996 the applicant complained he was allowed to make only two phone calls to his mother and one to his son. He was not allowed to call his brother. The applicant also submitted that the court's permission to make phone calls was delivered too late to the prison authorities and, as a result, he could not make use of it.

He relied on Article 5 §§ 1, 3 and 4 (right to liberty and security) and Article 8 (right to respect for private and family life).

The Court noted that the applicant's detention from 1 to 24 January 1997 lacked any legal basis. The regional court's application for the applicant's detention to be prolonged was lodged outside the relevant time-limit. The Court found, therefore, that he had been unlawfully deprived of his liberty and held, unanimously, that there had been a violation of Article 5 § 1.

The applicant complained that, having been detained, he had not been brought promptly before a judge or other officer authorised by law to exercise judicial power. The Court repeated, as it had done in previous judgments, that under Polish legislation in force at the time, a prosecutor could not be regarded as a “judicial officer” endowed with attributes of “independence” and “impartiality” required under Article 5 § 3. Consequently the Court found, unanimously, that there had been a violation of Article 5 § 3 concerning the applicant’s right to be brought promptly before a judge.

The applicant spent three years and 10 days in detention pending trial. The Court noted that the suspicion against the applicant of having committed the offences with which he had been charged and the need to secure the proper conduct of the proceedings at their early stage might initially have justified his detention. However, it did not consider that those grounds could suffice to justify the entire period in question. Furthermore, the authorities did not envisage the possibility of imposing on the applicant other measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings. The Court therefore concluded that the reasons given to justify the applicant’s detention were not “sufficient” and “relevant”, and held, unanimously, that there had been a violation of Article 5 § 3.

The Court also found, as it had done in previous cases raising identical complaints, that the fact that it was not possible under Polish legislation, applicable at the time, for a detainee to attend a court hearing dealing with his detention, to respond to the prosecutor’s submissions and to challenge – either himself or through his lawyer – the grounds for his continued detention was incompatible with the requirements of Article 5 § 4. Accordingly, it held, unanimously, that there had been a violation of Article 5 § 4.

The Court noted that the restrictions on the applicant’s contact with his mother, which might have been justified initially, went beyond what was necessary in a democratic society “to prevent disorder and crime”. The Court found that the authorities failed to maintain a fair balance between the means employed and the aim they sought to achieve. They therefore held, unanimously, that there had been a violation of Article 8.

The Court awarded the applicant EUR 7,000 for non-pecuniary damage. (The judgment is available only in English.)

Zouhar v. the Czech Republic (no. 8768/03)

Violation of Article 6 § 1

The applicant, Karel Zouhar, is a Czech national who was born in 1944 and lives in Brno (Czech Republic).

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicant complained about the length of civil and criminal proceedings brought against him by a sugar company with which he had signed a sales representative agreement.

The Court declared the application admissible as regards the excessive length of the civil proceedings and inadmissible as regards the length of the criminal proceedings. It noted that the civil proceedings had lasted for more than ten years to date, at two levels of jurisdiction. Having regard to the circumstances of the case, it considered that such a length of time was excessive and failed to satisfy the “reasonable time” requirement. Accordingly, the Court concluded, unanimously, that there had been a violation of Article 6 § 1 of the Convention

and awarded the applicant EUR 8,000 for non-pecuniary damage. (The judgment is available only in French.)

Spang v. Switzerland (no. 45228/99)

Violation of Article 6 § 1

The applicant, Robert Spang, is an American national who was born in 1932 and lives in Beaverton (Oregon, United States).

Between 1990 and 1992 the applicant worked as project manager for a Swiss company and during that period paid contributions into the corporate pension fund. When the company terminated his contract, the Staff Provident Fund which administered the pension fund reimbursed him about EUR 16,590 and refused to pay any more on the ground that he had not been made redundant for economic reasons. The applicant brought proceedings against the Staff Provident Fund, claiming that he was owed another EUR 41,730.

The applicant's claim was dismissed by the Insurance Tribunal and he lodged an appeal with the higher administrative body, the Federal Insurance Court. His appeal was transmitted for observations to the Staff Provident Fund and to the Federal Social Insurance Agency. On 2 April 1998 the Federal Insurance Court dismissed the applicant's appeal.

The applicant complained that the Federal Insurance Court had refused him permission to express his opinion on the position taken by the Federal Social Insurance Agency in his appeal proceedings. He relied on Article 6 § 1 (right to a fair hearing).

In view of the significance of observations emanating from a federal supervisory authority specialising in social insurance, which was not a party to the proceedings in question, the Court found that it was very unlikely that the higher body had failed to take note of those observations. Moreover, it considered that the observations at issue were likely to have had an impact on the approach subsequently taken by the Federal Insurance Court because they contained significant information on the reasons for the termination of the applicant's contract, which became a key issue in the later proceedings.

The Court further reiterated that the actual impact of the observations on the higher Swiss court was irrelevant. The parties to a dispute should be able to indicate whether they found it necessary to comment on a particular document. That possibility was especially important if litigants were to have confidence in the administration of justice, which was based, among other things, on the guarantee that they were allowed to comment on any documents in the case file. In these circumstances, the Court concluded, unanimously, that there had been a violation of Article 6 § 1 and awarded the applicant EUR 2,000 for non-pecuniary damage and EUR 3,500 for costs and expenses. (The judgment is available only in French.)

Violation of Article 5 §§ 3 and 4

Bazancir and Others v. Turkey (nos. 56002/00 and 7059/02)

The applicants, Yaşar Bazancir, Nevzat Bazancir, Ali Haydar Bazancir, Serdal Bazancir, Yılmaz Budancamanak and Abdullah Bozkurt, are Turkish nationals who were born in 1981, 1978, 1980, 1976, 1977 and 1980 respectively.

They were arrested by officers from Bingöl Police Headquarters on 4 and 5 August 1999 on suspicion of being members of the PKK (Kurdish Workers' Party). They remained in police custody until 11 August 1999, when they appeared before a judge and were placed in pre-trial detention.

At the end of the proceedings against the applicants, Ali Haydar Bazancir, Serdal Bazancir and Abdullah Bozkurt were acquitted by a state security court, which handed down prison sentences of 12 years and six months to Yaşar Bazancir and Nevzat Bazancir and a three-year prison sentence to Yılmaz Budancamanak.

The applicants complained of the length of time they were held in police custody and of the lack of a remedy to challenge the lawfulness of that detention. They relied on Article 5 §§ 3 and 4 (right to liberty and security).

The Court found that the police custody had lasted seven days for Nevzat Bazancir, Ali Haydar Bazancir, Serdal Bazancir and Abdullah Bozkurt, and six days for Yaşar Bazancir and Yılmaz Budancamanak. The Court could not accept that it was necessary to hold the applicants for that length of time before they were “brought before a judge”. Accordingly, it held, unanimously, that there had been a violation of Article 5 § 3.

Moreover, reiterating its previous finding that the review by Turkish courts of the lawfulness of detention, under Article 128 § 4 of the Code of Criminal Procedure, failed to meet the requirements of Article 5 § 4, the Court held, unanimously, that there had been a violation of that Convention provision.

As the applicants had not submitted a claim for just satisfaction, even though the Registry had drawn their attention to that possibility, the Court made no such award. (The judgment is available only in French.)

Violation of Article 6 § 1

Ceylan v. Turkey (No. 2) (no. 46454/99)

Violation of Article 10

The applicant, Münir Ceylan, is a Turkish national who was born in 1951 and lives in Istanbul. At the relevant time he was a trade-union member.

In January 1996 the applicant signed an article entitled *Emekçiler ve Kürtler* (The proletarians and the Kurds) which appeared in the newspaper *Demokrasi* (Democracy). The article was published in the wake of elections and criticised the “Kurds, proletarians and democrats” who had not voted for the People’s Democracy Party (*HADEP*), which according to the applicant was best able to defend the cause of “society’s underdogs”, namely the Kurds and workers. He also took the position that the conditions of war prevailing in the south-eastern part of the country explained the situation of hardship in which those people found themselves.

The applicant was charged with the offence of inciting the people to hatred and hostility on the basis of race or regional origin and was sentenced by Istanbul State Security Court to two years’ imprisonment and ordered to pay a fine. The court also ordered the closure of the newspaper *Demokrasi* for ten days. At the applicant’s request and on the payment of a sum of money, he obtained a stay of execution of his prison sentence.

The applicant contended, relying on Article 6 § 1 (right to a fair trial), that the state security court which tried and convicted him was not an “independent and impartial tribunal” capable of guaranteeing him a fair trial, owing to the presence of a military judge on the bench. He further alleged that his criminal conviction had infringed his right to freedom of expression, relying on Article 10 (freedom of expression).

The Court held, unanimously, that there had been a violation of Article 6 § 1 with regard to the lack of independence and impartiality of state security courts.

The Court moreover considered that the reasoning given by the domestic courts could not in itself be regarded as sufficient to justify the interference with the applicant's right to freedom of expression. While certain passages of the impugned article portrayed a most negative picture of the Turkish State and thus gave a hostile connotation to the views expressed, there was no incitement to violence, armed resistance or uprising, and it did not constitute hate speech, which, in the Court's view, was the main factor to be taken into account.

Moreover, the nature and severity of the sentences were also to be taken into account in assessing the proportionality of the interference. The applicant had suffered restrictions, especially in connection with his political activities, as a result of his conviction. In those circumstances the Court held, unanimously, that there had been a violation of Article 10.

By way of just satisfaction, the Court awarded the applicant EUR 2,000 for pecuniary and non-pecuniary damage and EUR 1,500 for costs and expenses. (The judgment is available only in French.)

Violation of Article 1 of Protocol No. 1

Kanioğlu and Others v. Turkey (nos. 44766/98, 44771/98 and 44772/98)

The applicants, Kazım Kanioğlu, Sabahattin Arcasoy and Mehmet Selim Aras, are Turkish nationals. All three were employed by the town of Mardin (Turkey).

The applicants complained, in particular, of the delay by the town of Mardin in paying them their supplementary retirement benefits. They relied on Article 1 of Protocol No. 1 (protection of property) and Article 13 (right to an effective remedy).

The Court held, unanimously, that there had been a violation of Article 1 of Protocol No. 1 and that it was unnecessary to examine separately the complaint submitted under Article 13. It considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants and in respect of pecuniary damage awarded EUR 11,850 to Mr ***Kanioğlu***, EUR 14,000 to Mr ***Arcaso*** and EUR 8,200 to Mr ***Aras***. It also awarded the applicants jointly EUR 3,000 for costs and expenses, minus EUR 701 already received by Mr ***Aras*** in legal aid. (The judgment is available only in French.)

N.A. and Others v. Turkey (no. 37451/97)

Violation of Article 1 of Protocol No. 1

The applicants are five Turkish nationals who were born in 1926, 1956, 1954, 1949 and 1950 respectively and live in Antalya (Turkey).

In 1986 they obtained a tourist-investment certificate from the authorities for the construction of a hotel on a plot of land they had inherited, located on the coast at Karasaz in the village of Çikcilli, municipality of Alanya.

On an appeal from the Public Treasury, Alanya Court of First Instance annulled the registration of the property in the land register and ordered the demolition of the hotel that was being built, on the ground that the plot of land in question was located on the seashore and could not be privately acquired. The Court of Cassation upheld that judgment on 1 March 1990.

The applicants were unsuccessful in bringing proceedings to claim damages for the loss of their property rights and for the demolition of the existing construction.

Before the Court, the applicants complained that they had not been compensated for the loss sustained as a result of the demolition of the hotel that was being built and the annulment of the registration of their property in the land register. They relied on Article 1 of Protocol No. 1 (protection of property).

The Court found that the applicants had acquired the disputed plot of land in good faith. Until the title was annulled in favour of the State, they had been the owners and had paid taxes in respect of the property. They had enjoyed peaceful possession of their property and had begun to have a hotel complex built on the land, as lawful owners, after obtaining a building permit for that purpose. But they were subsequently deprived of their property by a judicial decision, which the Court did not find in any way arbitrary. The deprivation of ownership of the land, which was located on the shoreline and was thus part of the beach, a public area open to all, fulfilled a legitimate purpose.

However, the applicants had not received any compensation for the transfer of their property to the Public Treasury or for the demolition of the hotel, notwithstanding the proceedings they had brought to that end before the Turkish courts, and without any justification by the Turkish Government for the total lack of compensation. The Court accordingly held, unanimously, that there had been a violation of Article 1 of Protocol No. 1. It found that the matter of just satisfaction was not ready for decision. (The judgment is available only in French.)

Repetitive Cases

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

Violation of Article 1 of Protocol No. 1

Chirò and Others v. Italy (Nos. 1, 2, 4 & 5) (nos. 63620/00, 65137/01, 67196/01, 67197/01)

Chirò Dora v. Italy (No. 3) (no. 65272/01)

La Rosa and Alba v. Italy (No. 1) (no. 58119/00)

In these six cases the authorities took possession of land belonging to the applicants with a view to expropriating it and began to carry out building work on the different plots. Since no expropriation order was issued and no compensation paid to the applicants, they brought proceedings to obtain damages for the unlawful occupancy of their land.

The applicants submitted that the occupancy of their land had breached their right to respect for their property under Article 1 of Protocol No. 1 (protection of property).

The Court considered that the loss of possession of the land at issue, combined with the lack of remedies to redress the situation, amounted to expropriation, in breach of the applicants' right to peaceful enjoyment of their property. It accordingly held, unanimously in each of the six cases, that there had been a violation of Article 1 of Protocol No. 1. The Court considered that the question of the application of Article 41 (just satisfaction) was not ready for decision. (The judgments are available only in French.)

Alataş and Kalkan v. Turkey (no. 57642/00)

Violation of Article 1 of Protocol No. 1

The applicants, Abdullah Alataş and İsmail Kalkan, are Turkish nationals aged 59 and 55 respectively, living in İskenderun, Turkey.

They complained of delays in the payment of compensation awarded them after their property was expropriated, relying on Article 1 of Protocol No. 1 (protection of property) and Article 6 § 1 (right to a fair hearing within a reasonable time).

The Court found, unanimously, that there had been a violation of Article 1 of Protocol No. 1 and that it was unnecessary to examine separately their complaint under Article 6 § 1. It awarded the applicants EUR 6,177 jointly for pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in French.)

Violation of Article 6 § 1

Eşidir and Others v. Turkey (no. 54814/00)

Mehmet Özcan and Others v. Turkey (no. 56006/00)

Yıldız Yılmaz v. Turkey (no. 66689/01)

In these three cases the applicants had been brought before a state security court and given prison sentences for belonging to or assisting illegal armed organisations. They relied on Article 6 (right to a fair trial), claiming that their case had not been heard by an independent and impartial tribunal, in particular because a military judge sat on the bench of state security courts. In the case of ***Eşidir and Others***, the applicants also relied on Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression), 11 (freedom of assembly and association) and 14 (prohibition of discrimination).

The Court declared the applications admissible as regards the complaints under Article 6 and declared the other complaints inadmissible. It concluded, unanimously in all three cases, that there had been a violation of Article 6 § 1 as regards the lack of independence and impartiality of state security courts. With regard to the other complaints concerning the unfairness of the proceedings, the Court reiterated that a court whose lack of independence and impartiality has been established could not, in any circumstances, guarantee a fair trial to those subject to its jurisdiction. The Court accordingly considered that it was unnecessary to examine those other complaints.

The Court held that the present judgments constituted in themselves sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. In respect of costs and expenses, it awarded EUR 1,000 to the applicants jointly in the case of ***Mehmet Özcan and Others*** and to ***Mr. Yılmaz***, and EUR 1,500 to the applicants jointly in the case of ***Eşidir and Others***. (The ***Eşidir and Others*** and ***Mehmet Özcan and Others*** judgments are available only in French and the ***Yıldız Yılmaz*** judgment only in English.)

Violation of Article 6 § 1

Violation of Article 13

Sychev v. Ukraine (no. 4773/02)

The applicant is a Ukrainian national, Viktor Grigoryevich Sychev, who was born in 1941 and lives in Gorlovka, the Donetsk Region of the Ukraine.

The applicant complained of the failure of the State authorities to execute a judgment in his favour and that he did not have an effective domestic remedy to redress the damage created by the delay in the enforcement proceedings.

The applicant relied on Article 6 § 1 (access to court) and Article 1 of Protocol No. 1 (protection of property).

Concerning Article 6 § 1, the Court observed that it was not open to a State authority to cite lack of funds as an excuse for not honouring a judgment. The Court noted that the judgments in question were not enforced for five years and two months, a situation for which the Government had not provided any plausible justification. The Court therefore held, unanimously, therefore, that there had been a violation of Article 6 § 1 and Article 1 of Protocol No. 1.

The Court further found that there was no effective remedy available to redress the damage created by the delay in the enforcement of the judgment in question which was caused by the authorities' failure to take the necessary legislative or budgetary measures. There had therefore been a violation of Article 13.

The Court therefore held, unanimously, that there had been a violation of Article 6 § 1 and 13 and awarded the applicant EUR 2,480 for pecuniary and non-pecuniary damage. (The judgment is available only in English.)

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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.