



## Judgments concerning Hungary, Italy, the Republic of Moldova, Serbia, Slovakia, Spain, Switzerland, Turkey and the United Kingdom

The European Court of Human Rights has today notified in writing the following 19 judgments, of which 12 (in italics) are Committee judgments and are final. The others are Chamber judgments<sup>1</sup> and are not final.

Repetitive cases<sup>2</sup> and length-of-proceedings cases, with the Court's main finding indicated, can be found at the end of the press release. The judgments in French are indicated with an asterisk (\*).

### Marinković v. Serbia (application no. 5353/11)

The applicant, Radoljub Marinković, is a Serbian national who was born in 1955 and lives in Užice (Serbia). The case concerned the enforcement of his civil claim against the company that had employed him, Raketa-Putnički Saobraćaj. Though the company was privatised in 2002, in July 2007 its sale was annulled, and the Serbian state owned a majority of the shares until these were sold in December 2008. Between March and September 2007, Mr Marinković successfully pursued three separate sets of civil claims against the company, seeking payment of salary arrears and social security contributions. He secured enforcement orders in all three cases, but the company entered insolvency in July 2010 and Mr Marinković did not receive all the money that was owed. Relying, in particular, on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights and Article 1 of Protocol No. 1 (protection of property) to the Convention, he complained notably that the Serbian state had failed to enforce the judgments given in his favour.

#### Violation of Article 6

#### Violation of Article 1 of Protocol No. 1

**Just satisfaction:** The Court held that Serbia was to pay the applicant the sums awarded in the final domestic judgments rendered in his favour in respect of pecuniary damage; it further awarded the applicant EUR 2,000 in respect of non-pecuniary damage and costs and expenses.

### Soltész v. Slovakia (no. 11867/09)

The applicant, Arpád Soltész, is a Slovak national who was born in 1969 and lives in Košice (Slovakia). He is a journalist. The case concerned an article published by Mr Soltész in the newspaper *Národná obroda* in June 2003. The article was about the disappearance of A. (a head of a municipal office and an entrepreneur), which occurred in May 1997. In May 2001 Mr Soltész obtained a declaration written by a former police officer, who had been in charge of the search for A. at the time of his disappearance. The declaration contained a number of statements which implied that D., a practicing lawyer and an entrepreneur, had been involved in A's disappearance. In his article, Mr Soltész stated that the newspaper was in possession of the statement and outlined what it said about D.'s involvement. D. then successfully sued Mr Soltész for libel. Mr Soltész appealed the

<sup>1</sup> Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dgdl/monitoring/execution](http://www.coe.int/t/dgdl/monitoring/execution)

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

decision, but this was dismissed by the Slovak Constitutional Court in June 2008. Relying in particular on Article 10 (freedom of expression), Mr Soltész complained of the proceedings against him, and the finding of liability that had been made.

#### Violation of Article 10

**Just satisfaction:** EUR 14,463 (pecuniary damage), EUR 5,850 (non-pecuniary damage) and EUR 3,935.10 (costs and expenses)

#### Wyssenbach v. Switzerland (no. 4) (no. 50478/06)\*

The applicants, Andreas Wyssenbach and Pia Wyssenbach-Illi, are Swiss nationals who were born in 1946 and 1935 respectively. Mr Wyssenbach died on 13 April 2009. Mrs Wyssenbach-Illi lives in Berne (Switzerland). The case concerned their allegations that the proceedings concerning them before the Federal Court had been unlawful. The applicants were renting immovable property in Berne and brought proceedings against the landlord after he terminated their lease in 2003. When their action was dismissed in 2004 they lodged an appeal on grounds of nullity with the Court of Appeal, which was dismissed in 2005. Arguing that the first-instance and appeal proceedings had been beset by irregularities, they lodged a public-law appeal with the Federal Court; this too was dismissed in 2006. Mr Wyssenbach, who was an experienced lawyer, informed the Federal Court that he had not been sent the observations submitted by the Court of Appeal and by the opposing party, and requested that he be provided with a copy. After receiving it he wrote to the President of the Federal Court reiterating his complaints. The latter replied that there was sufficient evidence that the observations had in fact been sent. Relying on Article 6 (right to a fair hearing), the applicants complained that the Federal Court had not sent them a copy of the observations made by the Court of Appeal and by the opposing party.

#### No violation of Article 6 § 1

#### Bülent Kaya v. Turkey (no. 52056/08)\*

The applicant, Bülent Kaya, is a Turkish national who was born in 1955 and lives in Ankara. The case concerned the fine he had been ordered to pay after giving a speech at a rally organised in 2003 by a political party, in the course of which slogans were chanted in support of Abdullah Öcalan. Mr Kaya was charged following the events and, in a final judgment of the Assize Court of March 2008, was found guilty of “glorifying crime and a criminal”. His sentence of three months’ imprisonment was commuted to a fine of 2,000 Turkish liras, which he paid in July 2008. Mr Kaya relied mainly on Article 10 (freedom of expression).

#### Violation of Article 10

**Just satisfaction:** EUR 860 (pecuniary damage), EUR 4,000 (non-pecuniary damage) and EUR 500 (costs and expenses)

#### Sace Elektrik Ticaret ve Sanayi A.Ş. v. Turkey (no. 20577/05)

The applicant, Sace Elektrik Ticaret ve Sanayi A.Ş., is a Turkish company. It owned a plot of land in Istanbul, which was mortgaged to a bank. Following a delay in monthly repayments, the bank started enforcement proceedings and the land was sold at an auction in March 2001. The company applied to have the sale annulled on the grounds that there had been flaws in the organisation of the auction. In September 2004, following a number of appeals, the Turkish courts dismissed the company’s case and ordered the payment of a fine amounting to 10% of the object of the dispute, totaling 262,307,000,000 Turkish lira (approximately 140,000 EUR). In January 2005 the Court of Cassation rejected the request of the company for an appeal. Relying on Article 6 § 1 (access to

court), the company complained that the fine imposed on it had constituted a breach of its right of access to a court, as the payment should be seen as a penalty for bringing its case.

#### **Violation of Article 6 § 1**

**Just satisfaction:** The Court held that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage suffered by the applicant company. It further awarded the applicant company EUR 3,000 in respect of costs and expenses.

### **M.H. v. the United Kingdom (no. 11577/06)**

The applicant, M.H., is a British national who was born in 1970 and lives in Shropshire (England, UK). She is severely disabled as a result of Down's syndrome. The case concerned her detention on mental health grounds. In January 2003 M.H. was detained in a hospital for 28 days for assessment. Although she was entitled to challenge her detention during the first fourteen days, she lacked legal capacity to do so. M.H.'s mother made an order for her discharge, but a barring order was issued preventing her mother from making any further order for the next six months. During the twenty-eight day assessment period, the local authority applied to the court to discharge M.H.'s mother as her nearest relative, an action which had the effect of extending her detention indefinitely. Once these proceedings had been issued, M.H. had no means to challenge her continued detention. She was eventually discharged in July 2003. Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), M.H. complained that her right to challenge the lawfulness of her detention had been violated, firstly because there had been no provision under UK law for the automatic review of the detention of persons without legal capacity, and secondly because there had been no provision for a patient, whether incapacitated or not, to take proceedings before a court or tribunal when the detention had been extended indefinitely following the issue of proceedings to displace the nearest relative.

**Violation of Article 5 § 4** – in respect of the first 27 days of the applicant's detention but not in respect of the remainder of the detention

**Just satisfaction:** EUR 4,400 (costs and expenses)

### **Repetitive cases**

The following cases raised issues which had already been submitted to the Court.

#### ***Strugaru v. the Republic of Moldova* (no. 44721/08)\***

This case concerned the setting-aside of an irrevocable decision given in the applicant's favour in the context of proceedings for the division of property following her divorce. The applicant relied on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property).

#### **Violation of Article 6 § 1**

#### **Violation of Article 1 of Protocol No. 1**

#### **Lolić v. Serbia** (no. 44095/06)

This case concerned the applicant's complaint about the non-enforcement of a judgment given in his favour. The applicant relied on Article 6 § 1 (right to a fair trial/access to court) and Article 1 of Protocol No. 1 (protection of property).

#### **Violation of Article 6 § 1**

#### **Violation of Article 1 of Protocol No. 1**

#### ***Naranjo Acevedo v. Spain* (no. 35348/09)\***

The applicant in this case, relying on Article 6 § 1 (right to a fair trial), complained of the fact that he had been unable to give evidence in person during the hearing of his case before the High Court of Justice.

#### **No violation of Article 6 § 1**

*Cihan Yeşil v. Turkey* (no. 24592/08)\*

*Sabahattin Alkan v. Turkey* (no. 44324/09)\*

In these cases, the applicants contended in particular that the length of their pre-trial detention had been in breach of Article 5 § 3 (right to liberty and security). The applicant in *Cihan Yeşil v. Turkey* also alleged notably a violation of Article 6 § 1 (right to a fair trial within a reasonable time).

**Violation of Article 5 § 3** – in the case of *Sabahattin Alkan* (the Court declared this complaint inadmissible in the case of *Cihan Yeşil*)

**Violation of Article 6 § 1** – in the case of *Cihan Yeşil*

*Nihat Ateş v. Turkey* (no. 2694/06)\*

The applicant in this case, relying on Article 5 § 4 (right to have the lawfulness of detention speedily decided by a court), complained about a lack of effective remedies with which to challenge the lawfulness of his detention. He also alleged a violation of Article 6 § 1 (right to a fair trial within a reasonable time).

**Violation of Article 5 § 4**

**Violation of Article 6 § 1**

### Length-of-proceedings cases

In the following cases, the applicants complained in particular under Article 6 § 1 (right to a fair hearing within a reasonable time) about the excessive length of civil proceedings.

*Börzsönyi v. Hungary* (no. 48150/11)

*Dömötör v. Hungary* (no. 25065/09)

*Faragó and Others v. Hungary* (no. 63153/10)

*István Kocsis v. Hungary* (no. 35000/07)

*Valvola Kft. v. Hungary* (no. 32744/10)

*Mercuri v. Italy* (no. 14055/04)\*

**Violation of Article 6 § 1** – in the six cases

In the following case, the applicants complained in particular under Article 6 § 1 (right to a fair trial within a reasonable time) about the excessive length of criminal proceedings.

*Máté v. Hungary* (no. 9429/10)

**Violation of Article 6 § 1**

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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.