EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 29 judgments on Tuesday 8 October 2019 and 37 judgments and / or decisions on Thursday 10 October 2019.

*Press releases and texts of the judgments and decisions will be available at **10 a.m.** (local time) on the Court's Internet site (www.echr.coe.int)*

Tuesday 8 October 2019

Denis and Irvine v. Belgium (applications nos. 62819/17 and 63921/17)

The applicants, Jimmy Denis and Derek Irvine, are both being held in compulsory confinement in Belgium. The first applicant is a Belgian national who was born in 1984 and the second is a British national who was born in 1964.

Mr Denis and Mr Irvine complain about the refusal by the Belgian courts to order their release, which they consider to be a requirement under the provisions of the Law of 5 May 2014.

The Law of 5 May 2014, which entered into force in October 2016, provides that compulsory confinement can only be imposed after crimes or serious offences resulting in physical harm or psychological injury to another person. The applicants, who were confined for offences classified as theft (Mr Denis in 2007) and attempted aggravated burglary (Mr Irvine in 2002), applied to the Belgian courts for release on the basis of this law, but were unsuccessful.

They allege, in particular, that their continued compulsory confinement since the entry into force of the 2014 Law is contrary to Article 5 § 1 (e) (right to liberty and security) and 5 § 4 (right to a speedy decision on the lawfulness of detention) of the European Convention on Human Rights.

Szurovecz v. Hungary (no. 15428/16)

The case concerns media access to reception facilities for asylum-seekers.

The applicant, Illés Szurovecz, is a Hungarian national who was born in 1993 and lives in Mezőberény (Hungary).

While working as a journalist for abcug.hu, an Internet news portal, he lodged a request with the immigration authorities in September 2015 to have access to the Debrecen Reception Centre to write a report on the living conditions of asylum-seekers. He specified that he would only take photos of those who gave prior consent and would obtain written authorisation from them, if need be.

His request was, however, rejected for reasons concerning the private life and security of asylum-seekers. In particular, many of those in reception centres had fled some form of persecution and could therefore be put at risk if exposed in the media.

Mr Szurovecz sought a judicial review, without success. The administrative court declared his action inadmissible because the refusal was not an administrative decision under the relevant domestic law and was not therefore subject to judicial review.

Relying on Article 10 (freedom of expression) and Article 13 (right to an effective remedy) of the European Convention, Mr Szurovecz complains that the authorities prevented him from reporting

first-hand on conditions at the Debrecen Reception Centre at the peak of the refugee crisis in Hungary.

Gauci and Others v. Malta (no. 57752/16)

The applicants are 26 Maltese nationals (one with dual Maltese and American nationality) and two British nationals who were born between 1929 and 1979. They live in San Ġiljan, Mellieħa, Swieqi, Baħar iċ Ċagħaq, Paola, and Sliema (Malta), and Kent, Somerset, Plymouth, and Middlesex (the United Kingdom) and Cork (Republic of Ireland).

The case concerns the applicants' complaint that land they owned was expropriated without there being a public interest at stake and that they were not paid compensation.

The applicants owned stakes in almost 4,000 square metres of land in Għadira Bay. In 1957 the authorities decided to expropriate the land at a time when other plots in the area were being taken for coastal development. In 1992 part of the land was granted to a company under a concession.

The applicants took legal steps over the years to try and recover their land, including constitutional proceedings which began in 2009. In 2015 the Civil Court (First Hall) in its constitutional competence found a breach of their property rights under the Convention and awarded them 20,000 euros in respect of non-pecuniary damage. It did not set an award in respect of pecuniary damage.

The court noted that 58 years after the expropriation the applicants had still not received a deed of transfer or any compensation. The judgment was confirmed on appeal.

The applicants complain about the taking of their land under Article 1 of Protocol No. 1 (protection of property).

Grace Gatt v. Malta (no. 46466/16)

The applicant, Grace Gatt, is a Maltese national who was born in 1968 and lives in Naxxar (Malta).

The case concerns disciplinary proceedings against her which lead to her dismissal as a police officer.

Ms Gatt was charged in 2001 and later convicted of fraud and collecting funds for her seriously ill son without prior authorisation and then in 2007 for acting as a private investigator without a licence when she went to Syria to bring back a kidnapped child. In the first set of proceedings she was put on probation, while in the second she was given a one-year suspended prison sentence.

In January 2006, the Commissioner of Police filed disciplinary charges against her for bringing the Maltese Police Force into disrepute and for going abroad, undertaking private work and appearing on a television programme without permission. The Internal Board of the Police examined the charges against her, and found sufficient evidence to prove her guilty. The board's report was passed on to the Public Service Commission, which recommended her dismissal. In December 2006 the Prime Minister approved her dismissal with immediate effect.

She brought constitutional redress proceedings, complaining of a breach of her human rights, in particular under Article 6 of the European Convention with regard to the board which had decided her case, as it was made up of the Police Commissioner's subordinates and could not therefore be impartial. At both first and second instance the courts rejected her claims because she was a police officer and was therefore not covered by the protection of Article 6.

Relying on Article 6 § 1 (right to a fair hearing), Ms Gatt complains that the disciplinary proceedings against her were unfair because the board was neither independent nor impartial. She also makes three other complaints under Article 10 (freedom of expression), Article 2 of Protocol No. 4 (freedom of movement) and Article 14 (prohibition of discrimination) in conjunction with Article 6 about her dismissal for participating in a television programme, limitations on her travelling and the fact that other police officers with allegedly worse behaviour than her had not been dismissed.

L.P. and Carvalho v. Portugal (nos. 24845/13 and 49103/15)

The applicants, L.P. and Pedro Miguel Carvalho, are two Portuguese lawyers who were born in 1965 and 1971 respectively. They live in Lisbon and Guimarães (Portugal).

The case concerns the applicants' conviction for slurring the honour of two judges on account of documents drawn up by them in their capacity as lawyers.

In 2008 L.P. sent a letter to the High Council of the Judiciary (HCJ) to complain about the conduct of Judge A.A. during a preliminary hearing and about certain procedural irregularities. The HCJ decided to take no action on the complaint. Judge A.A. subsequently lodged a complaint for defamation against L.P., alleging an attack on her reputation and honour. In 2012 the Lisbon Court of Appeal ordered L.P. to pay 5,000 euros (EUR) to the judge, finding that the accusations made against her had overstepped the bounds of admissible criticism. L.P.'s appeals against that decision were unsuccessful.

In 2009 two persons of Roma origin, represented by Mr Carvalho, lodged complaints against Judge A.F. for defamation and racial discrimination on account of comments made by her in a judgment concerning them. The case was discontinued. Again represented by Mr Carvalho, the same two persons brought a private prosecution for defamation, claiming EUR 10,000 from the judge. This complaint was declared manifestly unfounded by the Guimarães Court of Appeal. In 2011 the judge brought a civil action against Mr Carvalho, arguing that in his capacity as representative he had knowingly lodged an unfounded criminal complaint against her. Mr Carvalho was ordered to pay EUR 10,000 with default interest.

Relying on Article 10 (freedom of expression), the applicants complain of an infringement of their right to freedom of expression.

Solcan v. Romania (no. 32074/14)

The case concerns the authorities' refusal to allow a person being held in a psychiatric facility to attend her mother's funeral.

The applicant, Luminiţa Zamfira Solcan, is a Romanian national who was born in 1969 and is currently in a psychiatric facility in Pădureni-Grajduri (Romania). She committed a murder in France in 2005 and, diagnosed with paranoid schizophrenia, has been held since then in psychiatric facilities, first in France and as of 2012 in Romania.

Her mother died in 2013 and she lodged a request with the district court for leave to attend the funeral. The court refused because she posed a danger to the public on account of her mental health. In a final decision the County Court dismissed her appeal on points of law as there were no legal provisions allowing detention in a psychiatric facility to be interrupted.

Relying on Article 8 (right to respect for private and family life), she complains about the refusal to allow her to attend her mother's funeral, also pointing out that the decisions in her case were only taken after the funeral had actually taken place.

Fedulov v. Russia (no. 53068/08)

The applicant, Igor Fedulov, is a Russian national who was born in 1949 and lives in St Petersburg (Russia).

The case concerns his complaint about the authorities' failure to provide him with the free drugs to which he was entitled for his cancer care.

Mr Fedulov was diagnosed with cancer in 2007. He was found to be entitled to free medicine, in his case Bicalutamide, which he needed for eight to 12 months.

However, the pharmacy assigned to provide him with the pills free of charge only supplied him once on those terms. On all other occasions it told him it was out of stock of free Bicalutamide but that he could buy it at his own expense. Over the following months he paid 1,400 euros for the treatment.

He complained to the authorities and the courts about the lack of free medicine and sought to have his expenses reimbursed, but in February 2008 the District Court rejected his claim in full. It found that the authorities involved, the St Petersburg Medical Insurance Fund and the St Petersburg Healthcare Committee, had done all that was required of them by law.

In particular, the St Petersburg Medical Insurance Fund had fulfilled its obligation to request funds from the Federal Medical Insurance Fund to pay for free medicines but the Federal fund had rejected the request in 2007 as the federal budget set for that purpose had already been exceeded.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complains about the fact that he was not provided with the free medicine to which he was entitled by law and that the authorities failed to reimburse him after he had to buy the necessary drugs himself.

Korneyeva v. Russia (no. 72051/17)

The applicant, Katerina Korneyeva, is a Russian national who was born in 1996 and lives in St Petersburg (Russia).

The case concerns her complaint of being detained unlawfully and of being tried twice for the same administrative offence.

In June 2017 Ms Korneyeva was present in a park in St Petersburg where a protest rally was taking place, although she did not take part in the event. The police rounded up the demonstrators, including the applicant, and she was taken under escort to the police station. She was charged under Article 19.3 § 1 (failure to comply with the lawful order of an official in connection with the exercise of his duties) and under Article 20.2 § 5 (violation by a participant of the procedure for a public event) of the Code of Administrative Offences. She was released the following day.

Three days later a District Court judge examined two cases against the applicant, who was present at the hearings with her lawyer.

After refusing a defence request for a public prosecutor to be present to support the charges, the court hearings found Ms Korneyeva guilty of two offences in relation to taking part in an unlawful rally: one under Article 19.3 § 1 for her failure to comply with a lawful police order to cease her participation in such a rally, and one under Article 20.2 § 5 for failing to comply with her statutory obligation under the Public Events Act to comply with a police order, in this case to stop taking part in the event.

Ms Korneyeva appealed, alleging that she had been tried twice for the same offence and asking that the police officers who had given the pre-trial written testimony be summoned for questioning. The court rejected the *ne bis in idem* submission and declined to require the presence of the police officers, finding that there was enough evidence to uphold the first-instance decisions.

The applicant complains that the administrative escorting to the police station and the administrative arrest procedure violated Article 5 § 1 (right to liberty and security). She submits that the absence of a prosecuting party at the trial hearings and the denial of the possibility to question the police officers led to a violation of Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses). Lastly, she complains that her convictions for two offences breached Article 4 of Protocol No. 7 (right not to be tried or punished twice).

Margulev v. Russia (no. 15449/09)

The applicant, Andrey Margulev, is a stateless person who was born in 1953 and lives in Moscow.

The case concerns his complaint that a newspaper article that he was quoted in was found to have defamed Moscow City Council.

Mr Margulev was the head of a non-governmental organisation which was created to help preserve the 18th century Tsaritsyno complex outside Moscow.

In October 2007 he was quoted by the newspaper *Moskovskiy Korrespondent* as criticising restoration works at the complex, being funded by Moscow City Council, as "the desecration of a historical monument". The Council took the newspaper to court for defamation and Mr Margulev joined the proceedings as a third party. In July 2008 the court found for the council on the grounds that the defendant had not proved the statements.

The applicant and the newspaper's editorial board appealed, arguing that Mr Margulev's statements had been value judgments not susceptible of proof. Moscow City Court upheld the decision in September 2008.

The applicant complains under Article 10 (freedom of expression) that the defamation finding was a disproportionate interference with his freedom of expression.

Martynyuk v. Russia (no. 13764/15)

The applicant, Leonid Martynyuk, is a Russian national who was born in 1978 and currently lives in New York (USA).

The case concerns his complaint about the fairness of proceedings in which he was charged with an administrative offence.

Mr Martynyuk, a political activist and video blogger, was arrested on suspicion of minor hooliganism late in the evening in August 2014. An hour later a police officer compiled an administrative-offence report, citing another police officer and two eyewitnesses.

The applicant was taken before a judge the next day. The judge heard the applicant and his lawyer, and took testimony from a witness on his behalf. The police officer who compiled the report was also present, however, the judge refused a defence request to help obtain street security camera footage. The applicant was sentenced to 10 days' detention.

On appeal in September 2014, the verdict was upheld in one day of proceedings on the basis of the written testimony and other evidence. The applicant and his lawyer were absent.

Relying on Article 6 §§ 1 and 3 (b), (c) and (d) (right to a fair trial / right to adequate time and facilities for preparation of defence / right to legal assistance of own choosing / right to obtain attendance and examination of witnesses), the applicant complains that he did not have a fair hearing because he was not able to examine the witnesses against him and could not adduce his own evidence, such as security camera footage.

He complains that his rights under Article 2 of Protocol No. 7 (right of appeal in criminal matters) were undermined because the appeal did not have a suspensive effect.

Nadtoka v. Russia (no. 2) (no. 29097/08)

The applicant, Yelena Nadtoka, is a Russian national who was born in 1957 and lives in Novocherkassk, the Rostov Region (Russia). She is a journalist.

The case concerns court decisions against her for defamation following an interview she had published in a local newspaper alleging corruption in the Novocherkassk mayor's office.

In 2007 the mayor in question brought defamation proceedings against Ms Nadtoka, then editor-in-chief of the *Chastnaya Lovochka*, for an interview she had published with the leader of a Cossack movement. The mayor complained that allegations in the article were untrue and demanded a retraction of certain statements.

The courts, while dismissing claims about certain statements, found that others regarding misappropriation of property and breaches of the rules on selling plots of land, had tarnished the mayor's honour and dignity as a public official. The courts also emphasised that the mayor was a "renowned person in the town".

Relying on Article 10 (freedom of expression), Ms Nadtoka alleges that the courts failed to carry out the necessary balancing exercise between the mayor's right to reputation and her journalistic freedom to report on matters of public interest.

R.K. v. Russia (no. 30261/17)

The applicant, Mr R.K., is a national of the Democratic Republic of the Congo ("the DRC") who was born in 1990 and, according to the latest information available, is being held in a detention centre for foreigners in the Moscow Region.

The case concerns his complaint that his forced removal to the DRC would put him at risk of ill-treatment, even death.

Mr R.K. arrived in Moscow in 2015 on a student visa. In 2016 he applied for temporary asylum, which both the migration and judicial authorities refused to grant. They found that he had failed to provide evidence that he was involved in any DRC opposition groups and for this reason could fear persecution and/or ill-treatment if returned.

During those proceedings he was arrested in March 2017 for outstaying his visa. A Moscow district court examined his case immediately and found that he had breached migration rules. The court ordered that he be held at a centre for the temporary detention of foreigners until he could be removed to the DRC.

His removal was, however, stayed in April 2017 on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Russian Government that he should not be removed for the duration of the proceedings before it.

Relying on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), Mr R.K. alleges that he is wanted by the authorities in the DRC for his participation in the protests by the political opposition and he fears persecution and ill-treatment if returned to the DRC. He also complains under Article 5 §§ 1 (f) and 4 (right to liberty and security / right to have lawfulness of detention decided speedily by a court) that the proceedings on his detention pending expulsion were arbitrary and too long and that he has had no access to effective judicial review of his detention.

Urazbayev v. Russia (no. 13128/06)

The applicant, Mr Mukhamedzhan Ramazanovich Urazbayev, is a Russian national who was born in 1964 and is currently being held in a correctional colony in Kurgan.

The case concerns the applicant's complaint about his conviction. He alleges that it was based on a confession obtained by the police from his brother under torture while his brother was being held in arbitrary detention.

On 6 May 2002 a criminal investigation was opened into the theft of cattle in the Katayskiy district. Mr Urazbayev and his brother were suspected. A police ambush was put in place, in the course of which a police officer was killed.

Between 10 and 12 May 2002 police officers questioned the applicant's brother, who was placed in administrative detention at that time for using obscene language in a public place. On 12 May 2002 his brother drew up a "sincere confession", stating that he, and his brother, had stolen cattle and that his brother had admitted to him that he had killed the police officer. The following day, he indicated to a court-appointed lawyer that he wished to withdraw his statements since they had

been extracted under torture. He lodged a complaint alleging police violence. On 27 June 2004 Mr Urazbayev, who was on the run, was captured and arrested as a suspect in the unlawful killing of the police officer.

Mr Urazbayev's criminal trial opened in 2004 before the Kurgan Regional Court. The applicant denied all the accusations and asked that his brother's statements be excluded from the prosecution evidence since they had been obtained under torture in the course of unlawful detention and in the absence of a lawyer. On 15 June 2005 the Kurgan Regional Court, basing its finding on the "sincere confession" by the applicant's brother, sentenced him to 22 years' imprisonment for the unlawful killing of a police officer, the theft of weapons and ammunition and the unlawful possession of weapons and explosives. The court established that Mr Urazbayev's brother had been at his side when he had fired and that he was the only witness to the murder.

Mr Urazbayev appealed on points of law. The Supreme Court upheld the judgment.

Relying on Article 6 § 1 (right to a fair trial), the applicant complains that his conviction was based on statements extracted from his brother under torture in the course of arbitrary detention by the police.

Zelikha Magomadova v. Russia (no. 58724/14)

The applicant, Zelikha Khalitovna Magomadova, is a Russian national who was born in 1980 and lives in the village of Ishcherskaya in the Chechen Republic (Russia).

The case concerns her complaint about the authorities' decision to withdraw her parental authority in respect of her six children.

Ms Magomadova alleges that after her husband, a police officer, had died on duty in 2006, his relatives had put pressure on her so that they could take possession of his house and the State benefits to which she was entitled. This situation led, in February 2010, to one of her brothers-in-law, E.B., hitting her on the head and taking her to her mother's home in Ishcherskaya. The children stayed with her husband's family. She has had no access to them since.

Three sets of court proceedings ensued for deprivation of her parental authority, all brought by E.B., who had been appointed the children's legal guardian in April 2010. Throughout those proceedings, and two sets of enforcement proceedings, she stated that she wanted to care for her children. She also repeatedly informed the courts, as well as law-enforcement agencies and bailiffs that she was frightened of her late husband's relatives because they were hostile, even threatening, towards her and obstructed all contact between her and the children.

The courts rejected E.B.'s first claim in August 2010, finding that there was no evidence to prove his allegations that his sister-in-law had neglected her parental duties or ill-treated the children. Although the courts ordered that the children should live with their mother, the judgment was never enforced because the bailiff in charge repeatedly refused to commence the enforcement procedure.

The proceedings for deprivation of parental authority were then reopened in 2011 on the basis of newly discovered circumstances, namely that Ms Magomadova had been seen in the cars of unknown men on several occasions, which fact, in the courts' view, proved that she was cohabitating with a man and thus had an "immoral lifestyle". In a judgment of January 2012, E.B.'s claim was again rejected for lack of evidence. However, given that the children had by that time been living with their paternal relatives for two years, the courts ordered that they should continue living with E.B., determining contact arrangements with their mother. That part of the judgment was also never enforced, despite Ms Magomadova's applications.

Ultimately, in the third set of proceedings in 2013, the courts granted E.B.'s claim. They found that, despite the arrangements ordered in the judgment of 2012, she had failed to contact her children, in particular her two eldest daughters who by that time were in medical school and were no longer

living with their paternal relatives, or to support them financially. The courts concluded that she had therefore avoided bringing up her children.

Relying on Article 8 (right to respect for private and family life), Ms Magomadova complains that the decision to deprive her of parental authority was essentially based on her failure to maintain contact with her children when in fact she had been the victim of continued and arbitrary denial of access to them.

Balsamo v. San Marino (nos. 20319/17 and 21414/17)

The applicants, Valentina Balsamo and Angela Balsamo, are Italian nationals who were born in 1986 and 1985 respectively and live in Brescia (Italy).

The case concerns the confiscation of assets in the framework of money laundering proceedings.

In July 2011 a San Marino investigating judge seized assets worth some 1.9 million euros in a current account and a bond account which had been opened by the first applicant. The basis for the decision was an investigation against both applicants and their father for ongoing money laundering.

In November 2014 the applicants were found guilty of money laundering and the entire frozen amount was confiscated. The court relied on evidence that the father had been tried and convicted in Italy of theft and receiving stolen goods, which had led to proceeds of 750,000 euros.

The San Marino court also concluded that given the father's previous record it could not be excluded that the whole amount seized from the applicants had had a criminal origin. It did not accept their explanation that the funds had come from licit activities such as real estate or the family business.

On appeal, the applicants were acquitted in October 2016 of money laundering owing to their young age and possible lack of knowledge of the criminal origin of the funds. However, the confiscation order was upheld owing to the funds' clearly criminal origin. The applicants applied to the judge for extraordinary remedies for a revision of the appeal judgment, relying on Convention provisions. Their revision request was rejected in May 2017.

Relying on Article 7 (no punishment without law), the applicants complain of being punished despite being acquitted and that there was a violation of Article 6 § 2 (presumption of innocence). Relying on Article 13 (right to an effective remedy), they allege that the domestic system did not provide an effective remedy for their Convention complaints. They also allege that the confiscation violated their rights under Article 1 of Protocol No. 1 (protection of property).

Almaši v. Serbia (no. 21388/15)

The applicant, Šandor Almaši, is a Serbian national who was born in 1979 and lives in Male Pijace (Serbia).

The case concerns his alleged ill-treatment by the police and his complaint of a conviction on the basis of a confession made under duress.

Mr Almaši was sentenced to one year in prison in September 2011 after being found guilty of crossing the border illegally and of people smuggling, along with an accomplice.

During the domestic proceedings the defence alleged that Mr Almaši had been coerced into a confession while in custody after being slapped by a police officer, that witness testimony against him was unreliable, particularly an identification procedure, and that the appointment of a legal-aid lawyer during his police questioning had been irregular as he was not allowed to appoint his own lawyer. The Constitutional Court rejected his final appeal in March 2015.

The applicant complains under Article 3 (prohibition of inhuman or degrading treatment) that he was ill-treated by the police and that no proper investigation into his allegations of ill-treatment took place. He also complains under Article 6 §§ 1 and 3 (c) of a lack of fairness in the criminal

proceedings against him, in particular, that his conviction was based on the confession he made in April 2011, itself obtained in breach of his right to legal assistance of his own choosing.

Milovanović v. Serbia (no. 56065/10)

The applicant, Mirjana Milovanović, is a Serbian national who was born in 1964 and lives in Belgrade.

The case concerns her being unable to obtain custody of her children despite court orders dating from 2003 in her favour.

Ms Milovanović split up from her husband in 2001, taking their children with her. However, in January 2002 the ex-partner forcibly seized the children. From that time until October 2009 the applicant had no regular contact with her children because of deliberate obstruction by her ex-partner which led in turn to the children becoming alienated from her.

She won an interim order for sole custody in February 2003, and for a hand over of the children within 24 hours, and a final judgment for sole custody in October 2005, with a prohibition on contact between the ex-partner and the children for three months to enable them to restore their emotional ties with her. Neither order was ever enforced. Over the years the applicant has had sporadic contact with the children, who eventually stated that they preferred to stay with their father and meet the applicant regularly. In the meantime the children turned 18 .

Following an appeal by the applicant in February 2009, the Constitutional Court in May 2012 found a violation of the applicant's right to a fair trial as regards the length of the enforcement proceedings for the final custody judgment of October 2005.

The applicant complains that the Serbian authorities failed to to take the necessary measures to enforce the child custody decisions rendered in her favour, which has led to her being denied contact with her children and being prevented from effectively exercising her custody and parental rights since 2002. The Court will deal with this aspect of the case under Article 8 (right to respect for private and family life).

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) the applicant also complains about the length of the proceedings before the Constitutional Court.

Thursday 10 October 2019

Lewit v. Austria (no. 4782/18)

The applicant, Aba Lewit, is an Austrian national who was born in 1923 and lives in Vienna. He is one of the last Holocaust survivors still alive.

The case concerns his complaint that the domestic courts failed to protect his right to reputation against defamatory statements made in a right-wing periodical.

In summer 2015 the periodical *Aula* published an article where people liberated from the Mauthausen concentration camp were described as "mass murderers", "criminals" and "a plague". The authorities opened criminal investigations against the author of the article but they were ultimately discontinued.

In Aula's February 2016 issue the same author reported on the discontinuation of the criminal investigations and repeated verbatim the earlier statements. Mr Lewit, together with nine other survivors, who had all been imprisoned in concentration camps and liberated in 1945, brought an action under the Media Act (*Mediengesetz*) against *Aula* and the author.

The claimants argued that they had been defamed and insulted by the 2016 article, even if they had not been named personally. They reiterated that they had all been victims of the National Socialist

regime, and had been imprisoned in Mauthausen because of their origins, beliefs or faith and liberated after the war. They had never committed any criminally significant acts.

The Graz Regional Criminal Court dismissed their claim, finding that the number of people liberated from Mauthausen, about 20,000 in 1945, was so large as to mean the claimants could not be individually concerned by the article's statements. It held that the claimants therefore did not have standing to bring their claim. It also found that the article had not contained any separate defamatory statements when compared with the one published in 2015.

On appeal the claimants argued that they were indeed recognisable, firstly, because only a few former Mauthausen prisoners were still alive and, secondly, because they were known as activist survivors of the Holocaust.

The Graz Court of Appeal dismissed the appeal, without going into the questions of the size of the group and the claimants' legal standing. It confirmed the first-instance finding that the statements in question did not have a separate meaning from those published in the 2015 article.

Relying on Article 8 (right to respect for private and family life), Mr Lewit complains that the courts failed in their duty to protect his reputation from the false and defamatory statements made in *Aula.*

O.D. v. Bulgaria (no. 34016/18)

The applicant is a Syrian national who was born in 1991 and lives in Sofia.

The case concerns an order to expel the applicant, a former Syrian serviceman.

In 2011 the applicant joined the Syrian army, in which he apparently reached the grade of sergeant. He was a sniper and had the ability to handle missiles. He states that he deserted in 2012, joining the Free Syrian Army for nine months.

In 2013 he left Syria for Turkey, where he stayed for three months. He then travelled to Bulgaria, where he made two asylum claims, both of which were rejected. The Bulgarian authorities ordered his expulsion in the same year, considering that he represented a threat to national security. The applicant's appeals against that decision were unsuccessful.

In 2018 the European Court of Human Rights decided to indicate to the Bulgarian Government that the applicant should not be expelled for the duration of the proceedings before the Court, under Rule 39 of the Rules of Court (interim measures).

In 2018 the Syrian Embassy in Bulgaria issued the applicant with a passport that was valid for two years. It is currently held by the "Migration" service in the Ministry of the Interior and the applicant is considered to be unlawfully resident in Bulgaria.

The applicant alleges that, were he to be expelled to Syria, he would be at risk of breaches of his rights as guaranteed by Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment). He also submits that he has not had an effective remedy (Article 13) in respect of his complaints.

Lacombe v. France (no. 23941/14)

The applicant, Mr Jean-Philippe Lacombe, is a French national who was born in 1968 and lives in Nice.

The case concerns proceedings relating to the return of the applicant's son to his mother in the United States, in application of the Hague Convention.

In April 1998 Mr Lacombe married a Mexican national in Mexico, where the couple also had a child. In February 2004 the mother took the child to the United States for two months without telling Mr Lacombe. A divorce was pronounced that year and parental responsibility was assigned jointly to the two parents; however, the residence order was issued in respect of Mr Lacombe and the mother had

contact rights. In June 2005 the mother was given residence rights, while the father was granted contact rights.

A first set of proceedings for international abduction was opened in 2005-2006 following Mr Lacombe's departure for France with the child. In a judgment of 19 October 2006 the Marseilles TGI held that the child's removal had been wrongful within the meaning of Article 3 of the Hague Convention. However, in view of pending proceedings in Mexico for the attempted murder of the applicant, in which the mother was suspected of involvement, the TGI held that there existed a serious risk that the child's return would expose him to danger. The court applied Article 13 (b) of the Hague Convention and did not order the child's return to his mother. Following an agreement with the mother, Mr Lacombe agreed to return custody of the child to her.

In April 2007 the family affairs judge at the Mexico district court removed the applicant's parental responsibility in respect of his child on account of the risk that he would leave the country. In October 2007 the mother left Mexico for the United States, taking the child with her. A warrant for her arrest was issued by the Mexican authorities for child abduction. Having found his child in Texas in February 2009, the applicant obtained temporary custody from the Texan courts pending a hearing at which the American court was due to rule on the issue of custody. The applicant took his son to Mexico and then to France, without attending this hearing. The American authorities issued an arrest warrant against him for child abduction.

The second set of proceedings for international abduction was opened in 2009-2010. In October 2009 the mother applied to the American Central Authority, requesting the child's return in application of the Hague Convention. In August 2010 the American courts granted her custody of the child and, during the same period, the Marseille TGI ordered that he be returned to his mother in the United States. Mr Lacombe handed the child over to his mother, but lodged an appeal against that judgment. The appeal court upheld the judgment. It held that the child's habitual residence was indeed in Texas and that he ran no risk of harm in his mother's care. The Court of Cassation dismissed an appeal on points of law lodged by the applicant.

Relying on Article 8 (right to respect for family life), the applicant submits that is the victim of a breach of his right to respect for his family life on account of the decision by the French courts to order his son's return to the United States. He alleges a lack of reasoning in the domestic courts' decisions with regard to the existence of a serious threat to the child in the event of return.

M.D. v. France (no. 50376/13)

The applicant, M. D., is a Guinean national from Conakry.

The case concerns the applicant's complaint that as a migrant who had identified himself as an unaccompanied minor he had been left in a precarious material situation by the French authorities.

Having arrived in France on 23 September 2012, M.D. went immediately to the reception "platform" for asylum-seekers, stating that he had been born on 15 October 1996 and was therefore a minor. Bone tests he underwent indicated that he was 19.

On 28 September 2012, on the basis of the civil-status documents submitted by M.D., the guardianship judge held that he was a minor and issued a State guardianship order. On 4 June 2013 the Rennes Court of Appeal, on an appeal by the President of the council for the Loire-Atlantique *département*, set aside that order. It held that in the absence of a reliable document permitting the applicant's age to be determined, there was no evidence preventing it from accepting the results of the bone tests, and therefore concluded that M.D. was an adult. The protection and assistance measures were lifted.

In November 2013 the Guinean authorities issued M.D. with a passport indicating his date of birth as 15 October 1996. On 31 July 2014 the children's judge decided, having regard to this passport, that M.D. was a minor and made him the subject of an education assistance measure until he reached

majority. He was issued with an initial residence permit in November 2014, then with a multi-year residence permit authorising him to work. Since 14 May 2018 M.D. has been employed by a company in Nantes on a contract of indefinite duration.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicant alleges that he was abandoned by the national authorities in a precarious material situation, although he was an unaccompanied foreign minor, and that no remedy was available to him.

Batiashvili v. Georgia (no. 8284/07)

The applicant, Irakli Batiashvili, is a Georgian national who was born in 1961 and lives in Tbilisi.

The case concerns his detention pending trial and an alleged violation of his right to be presumed innocent in connection with criminal proceedings over his allegedly helping an armed group in carrying out a rebellion.

In July 2006 tensions arose in Georgia over the possibility that an armed group in the Kodori Gorge region, which had helped the Government in its 1992-1993 fight against separatist forces in Abkhazia, would begin a conflict with the State. The authorities eventually took control of the gorge in late July 2006 in a near bloodless police operation.

Mr Batiashvili was charged with failure to report to the authorities the potential involvement of the Abkhaz separatists in the conflict with the State and with aiding and abetting the leader of the Kodori Gorge armed force, E.K., after telephone calls between the two men were intercepted. In particular, a recording of one call played on television appeared to show the applicant and E.K. discussing, among other things, help for the armed group from the Abkhaz separatists. Mr Batiashvili later said E.K. had refused the Abkhaz offer but that that part of the conversation had been omitted from the broadcast.

Mr Batiashvili was eventually held in pre-trial detention for four months and found guilty of the charges in 2007. He received a presidential pardon on an unspecified date.

The applicant raises various complaints about the decisions on his pre-trial detention, the appeal proceedings and access to evidence on that question under Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) and Article 6 §§ 1 and 3 (b).

He further alleges that statements by prominent members of parliament and the dissemination to the media of an edited recording of his telephone conversation infringed his rights under Article 6 § 2 (presumption of innocence). Lastly, he argues that his pre-trial detention was aimed at removing him from the political scene rather than for any of the grounds specified in Article 5 § 1.

Pantelidou v. Greece (no. 36267/19)

The applicant, Aikaterini-Veatriki Pantelidou, is a Greek national who was born in 1951 and lives in Athens.

The case concerns the refusal by the police to permit Ms Pantelidou to enter a place of worship, established by the “followers of the Julian calendar for religious festivals” in a “green area” which belonged to the State and was earmarked, by legislation, for construction of the Athens mosque.

The Supreme Administrative Court dismissed an appeal lodged by Ms Pantelidou and other persons.

Relying on Article 9 (freedom of thought, conscience and religion), Ms Pantelidou submits that her right to manifest her religion has been violated.

The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.

These rulings can be consulted from the day of their delivery on the Court's online database HUDOC.

They will not appear in the press release issued on that day.

Tuesday 8 October 2019

Name	Main application number
S.C. Continental Hotels S.A. v. Romania	36407/12
Kapustin v. Russia	36801/09
Khakimova and Others v. Russia	36875/11
Manelyuk and Others v. Russia	40442/07
Maslennikov v. Russia	29842/11
Mumanzhinova and Others v. Russia	724/18
Nakani and Others v. Russia	10229/10
R.R. and A.R. v. Russia	67485/17
S.B. and S.Z. v. Russia	65122/17
Shcherbakov v. Russia	49506/12
Talatov v. Russia	11008/04
Vanyukova v. Russia	22764/12

Thursday 10 October 2019

Name	Main application number
Avetisyan v. Armenia	29731/08
Matevosyan v. Armenia	61730/08
Faval d.o.o. v. Croatia	13478/15
Lopac and Others v. Croatia	7834/12
Šarić v. Croatia	21899/13
Sokolov v. Croatia	57222/13
Vukelić v. Croatia	50546/14
Shanidze v. Georgia	7156/11
Raimondo v. Italy	42401/13
Dimovski v. North Macedonia	66007/13
Chudzikowski v. Poland	11570/18
Marszałek v. Poland	57929/14
Ojczyk v. Poland	77486/17
Zaręba v. Poland	59955/15
Azimov v. Russia	41135/14
Bykhovets v. Russia	59743/10
Khasulbekova and Others v. Russia	55050/11
Lishnyak v. Russia	9964/06
Nikolayenko and Others v. Russia	78494/14
Shumskiy v. Russia	32200/09
Umayeva and Others v. Russia	61555/13
Yushayevy and Others v. Russia	29541/14

Name	Main application number
Zemchenkova and Others v. Russia	8023/04
Marković v. Serbia	53661/13
Eze v. Sweden	57750/17
C.D. v. Switzerland	50553/17
Shala v. Switzerland	39488/14
Bondarenko v. Ukraine	35432/10
Dolgopolov v. Ukraine	73080/10
Katan v. Ukraine	19397/10
de Boer and Ibori v. the United Kingdom	19823/19

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