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

Press Release
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Judgments and decisions of 16 July 2015

The European Court of Human Rights has today notified in writing 27 judgments[1] and 57 decisions[2]:

13 Chamber judgments are summarised below; for four others, in the cases of *Kuttner v. Austria (application no. 7997/08)*, *Ghedir and Others v. France (no. 20579/12)*, *Gazsó v. Hungary (no. 48322/12)*, and *Nazarenko v. Russia (no. 39438/13)*, separate press releases have been issued;

for one decision, *Nicklinson and Lamb v. the United Kingdom (nos. 2478/15 and 1787/15)*, a separate press release has also been issued;

one Chamber judgment and nine Committee judgments, which concern issues issues which have already been submitted to the Court, as well as the 56 remaining decisions, can be consulted on *Hudoc* and do not appear in this press release.

The judgments in French below are indicated with an asterisk (*).

Kerimli v. Azerbaijan (application no. 3967/09)

The applicant, Ali Amirhuseyn oglu Kerimli, is an Azerbaijani national who was born in 1965 and lives in Baku. He is an opposition politician and chairman of the reformist wing of the Azerbaijan Popular Front Party.

The case concerned the refusal to renew Mr Kerimli's international passport.

In June 2006, on applying for a new passport, Mr Kerimli was informed that his application had been rejected on the ground that there were criminal proceedings pending against him. After inquiring with the Baku police, he discovered that criminal proceedings brought against him in 1994 for illegal possession of a hand grenade – following his arrest at a demonstration organised by his political party – had been suspended in 1995 and never discontinued. He subsequently repeatedly brought the matter to the attention of the prosecuting authorities and the domestic courts, arguing that the criminal charges against him had become time-barred in 1999 and that the proceedings should have thus been discontinued. In May 2008, the Nasimi District Court found that the domestic courts did not have competence to examine complaints against the prosecuting authorities' failure to discontinue the proceedings against Mr Kerimli. This decision was ultimately upheld by the Baku Court of Appeal in July 2008. As the criminal proceedings have still not been discontinued, Mr Kerimli has remained without a passport since June 2006.

Mr Kerimli complained that the refusal to issue him with a passport had infringed his freedom of movement under Article 2 § 2 of Protocol No. 4 (freedom of movement) to the European Convention on Human Rights. He alleged in particular that the authorities' refusal to issue him with a new passport on the ground that he might remain abroad to escape prosecution was groundless: notably, he had travelled abroad since the criminal proceedings against him in 1994 and prior to the refusal in 2006 using both regular and diplomatic passports and had always returned to Azerbaijan.

[1] Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber 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/dghl/monitoring/execution

[2] Inadmissibility and strike-out decisions are final.

Violation of Article 2 § 2 of Protocol No. 4

Just satisfaction: 5,000 euros (EUR) (non-pecuniary damage) and EUR 3,600 (costs and expenses)

Gégény v. Hungary (no. 44753/12)

The applicant, János Gégény, is a Hungarian national who was born in 1966 and is currently serving a long term of imprisonment in Hungary.

The case concerned Mr Gégény's complaint about the inadequate conditions of his detention for the last 13 years in different prison facilities. Notably, he started to serve his prison sentence in Szeged Prison in October 2001, was transferred in January 2006 to Budapest Prison and then to Sátoraljaújhely Prison where he is currently being detained. He complains in particular about overcrowding in these prisons, combined with poor sanitary facilities and scarce opportunity for time out of his cell.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), he alleged that such conditions of detention were inhuman and degrading and that he had had no effective remedy available to him with which to complain.

Violation of Article 3 (inhuman and degrading treatment)
Violation of Article 13

Just satisfaction: EUR 26,000 (non-pecuniary damage) and EUR 1,000 (costs and expenses)

Akinnibosun v. Italy (no. 9056/14)*

The applicant, Eyitope Akinnibosun, is a Nigerian national who was born in 1979 and lives in Lecce (Italy).

The case concerned the decision to place his daughter in the care of social services and her subsequent adoption by a foster family.

Mr Akinnibosun arrived in Italy in 2008, having travelled by boat with his two-year-old daughter from Libya, where he had been living with his wife and two children. On their arrival they were placed in a refugee reception centre in Trepuzzi, where Mr Akinnibosun's daughter was monitored by social services. The report issued by social services in April 2009 described a child in distress and a difficult relationship between her and her father. According to the psychiatrist who met the child in 2008, she was suffering from post-traumatic stress disorder and felt that she had been abandoned.

In 2009 Mr Akinnibosun was arrested and placed in detention on suspicion of conspiring in the trafficking of irregular migrants. His daughter was moved to a children's home. In 2010 the Lecce Family Court ("the Family Court") suspended his parental responsibility and placed the child with a foster family in order to provide her with a stable environment, since she was traumatised and used to wake up crying during the night. In 2011 Mr Akinnibosun was acquitted and released, and requested contact rights with his daughter. The Family Court granted the request and a first meeting took place on 30 July 2012. Social services submitted a report shortly afterwards according to which the child had been tense during the meeting, recalling in particular the sea crossing and the fact that her father had not taken care of her. In 2013 the Family Court and the Lecce Court of Appeal suspended Mr Akinnibosun's contact rights on the ground that he was not materially or emotionally capable of taking care of his daughter. The courts noted that, according to a social services report, the child's foster family had said that she had been very agitated following the meeting of 30 July 2012 and had been distressed at the prospect of seeing her father again.

In September 2013 and January 2014 Mr Akinnibosun wrote two letters to his daughter saying that he was thinking about her and was looking for work.

On 23 January 2014 the Family Court, taking the view that the child had been abandoned since her father could not take care of her, decided to declare her eligible for adoption. The Court of Appeal, basing its decision on the reports by social services and on the meeting of 30 July 2012, upheld that ruling, finding in particular that Mr Akinnibosun had not shown that he had taken his child's interests into consideration. The court further found that Mr Akinnibosun had an authoritarian attitude and a difficult relationship with his daughter. Although he had found a stable job and somewhere to live, the family bond was still lacking, in view of the fact that the child's state of mind had worsened each time her biological father was mentioned and also on the only occasion when they had met.

Relying in particular on Article 8 (right to respect for private and family life), Mr Akinnibosun complained that the authorities had not taken the appropriate steps to enable him to maintain any ties with his daughter. He contended in particular that they had merely taken note of his financial and social difficulties, without helping him to overcome them.

Violation of Article 8

Just satisfaction: EUR 32,000 (non-pecuniary damage) and EUR 5,000 (costs and expenses)

Ciprian Vlăduț and Ioan Florin Pop v. Romania (nos. 43490/07 and 44304/07)

The applicants, Ciprian Vlăduț Pop and Ioan Florin Pop, are Romanian nationals who were born in 1982 and 1974 respectively and live in Tautii Magheraus (Romania). They are brothers.

Their case concerned an allegation of police entrapment and inadequate conditions of detention.

Following a police undercover operation in December 2004, involving telephone tapping, the brothers were arrested for offering ecstasy tablets to an undercover police officer. The brothers were committed for trial on drug trafficking charges and were subsequently convicted as charged in November 2005: Ciprian was sentenced to seven years and six months' imprisonment and Ioan to three years and six months' imprisonment. Their conviction was mainly based on the police reports from the undercover operation, transcripts of intercepted telephone calls and witness statements by two taxi drivers who transported the undercover police agents to the arranged place for the drug deal. In the ensuing appeal proceedings the brothers complained in particular that they were not given access to the telephone transcripts and that the undercover police operation had only started from the suspicion that Ciprian was a drug user, not dealer. Their complaints were dismissed at first and second instance and, ultimately, their appeal on points of law was dismissed in a final decision of March 2007.

Relying on Article 6 § 1 (right to a fair trial), the brothers alleged that the criminal proceedings against them and their ensuing convictions had been unfair. They argued that they had not been involved in drug trafficking prior to 2004 and that, were it not for the undercover police officer's insistence, Ciprian would not have procured and sold the drugs and his brother would not have felt compelled to help his brother out with the deal. They also alleged that they had been given no opportunity to question the undercover agent during the proceedings, despite his reports being the main basis for their convictions.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Ioan complained about overcrowding in various facilities between his arrest in December 2004 and until his release in May 2007, alleging that such conditions had resulted in him making two suicide attempts.

Violation of Article 3 (degrading treatment) – with respect to Ioan Florin Pop
Violation of Article 6 § 1 – with respect to both applicants

Just satisfaction: EUR 2,400 to Ciprian Vlăduț Pop and EUR 9,750 to Ioan Florin Pop (non-pecuniary damage) and EUR 3,500 jointly to both applicants (costs and expenses)

Samachișă v. Romania (no. 57467/10)

The applicant, Liviu Samachișă, is an American and Romanian national who was born in 1956 and lives in Fălticeni (Romania).

The case concerned his allegation that he had been assaulted by the police.

Mr Samachișă alleges that he was assaulted by the police on 31 July 2008 when, having visited a friend in Galaţi, he returned to his car to find it surrounded by three police cars and a group of officers. The officers apparently thought that his car had been involved in an accident which had injured some pedestrians. He alleges in particular that the police officers violently grabbed and handcuffed him and then, on the way to the police station, continued to punch him until he fainted. Released on the same day, he went to Galaţi hospital's emergency unit where he was diagnosed with scratches and bruises to his arms, neck and clavicle, severe thorax contusion and a cranio-cerebral trauma. The hospital's dental emergency unit also diagnosed him with a contusion in the chin area as a result of a blow.

According to the Government, Mr Samachișă had been caught speeding by the police but refused to stop his car. When the police finally caught up with him, he was aggressive both verbally and physically and refused to show his identity papers. Given his resistance, the officers had had to use force to take him to the police station.

Shortly after the incident, Mr Samachișă brought criminal proceedings against the police officers involved in the incident for violent behaviour. The prosecuting authorities discontinued the proceedings in February 2009, finding that the officers had not committed any offence as they had had to use force to immobilise Mr Samachișă. That conclusion was based on the police officers' statements, corroborated by eye-witnesses. That decision was upheld in the ensuing court proceedings and his appeal on points of law was dismissed in a final judgment of February 2010.

Mr Samachișă alleged that the police officers' violent reaction had been unjustified and complained that the ensuing criminal investigation had been superficial and ineffective, failing to identify the police officers who had assaulted him. The Court examined the case under Article 3 (prohibition of inhuman or degrading treatment).

Violation of Article 3 (inhuman and degrading treatment)
Violation of Article 3 (investigation)

Just satisfaction: EUR 2,400 (pecuniary damage), EUR 11,700 (non-pecuniary damage) and EUR 300 (costs and expenses)

Samoilă v. Romania (no. 19994/04)*

The applicant, Gheorghe Samoilă, is a Romanian national who was born in 1930 and lives in Constanţa (Romania). He is retired and held a savings account with the Romanian People's Bank and Credit Cooperative, which subsequently went into liquidation.

The case concerned Mr Samoilă's alleged lack of access to a court in the context of the proceedings to wind up the Romanian People's Bank and Credit Cooperative (hereafter "the debtor company").

In 2002 Mr Samoilă brought a court action for repayment of the amount owed to him by the debtor company. The Romanian courts dismissed his claims for failure to pay the stamp duty. Mr Samoilă and the company's other creditors had been informed on radio and television and in the national press of the need to lodge their statements of claim and of the corresponding formalities, as the liquidator had maintained that it was impossible to notify each of the 60 thousand or so creditors individually, most of whom were small individual savers.

Relying in particular on Article 6 § 1 (right to a fair trial), Mr Samoilă submitted among other things that the final judgment of the Bucharest Court of Appeal of 5 November 2004 had infringed his right of access to a court in connection with his appeal. That decision referred only to twelve companies as having lodged the appeal, and made no mention of Mr Samoilă as a party to the proceedings.

Violation of Article 6 § 1 (access to a court) concerning the examination of the applicant's appeal by the Bucharest Court of Appeal

Just satisfaction: EUR 3,600 (non-pecuniary damage)

Sanatkar v. Romania (no. 74721/12)*

The applicant, Hakan Sanatkar, is a Turkish national who was born in 1959 and lives in Dobroieşti, in Ilfov County (Romania).

The case concerned his conditions of detention.

In 1998 Mr Sanatkar was sentenced to seven years' imprisonment for attempted murder. He served his sentence in several Romanian prisons. However, his application relates only to the conditions of detention in Giurgiu Prison (from 29 September 2011 to 4 February 2013) and Bucharest-Jilava Prison (from 4 February 2013 to 23 March 2014).

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Sanatkar complained of overcrowding in these prisons. In particular, in Bucharest-Jilava Prison, 38 prisoners allegedly shared a 45 sq. m cell that was fitted out with triple bunk beds.

Violation of Article 3 – concerning the conditions of detention in Bucharest Jilava Prison

Just satisfaction: The applicant did not submit a claim for just satisfaction within the time-limit fixed by the Court.

Aleksey Borisov v. Russia (no. 12008/06) *

The applicant, Aleksey Borisov, is a Russian national who was born in 1974. He is currently in Prison No. 1 in the city of Voronezh, in the Voronezh region of Russia. In 2007 he was sentenced to 17 years' imprisonment for banditry.

The case concerned in particular his allegations of ill-treatment by police officers during a search of his home.

The search took place on 20 April 2004 in the context of a criminal investigation concerning Mr Borisov for banditry. Following the search Mr Borisov jumped out the window of his flat in order, according to his account, to put an end to the suffering to which the police officers had subjected him during the search; the Government claimed that he had sought to escape. Mr Borisov alleged, among other things, that he had been kicked, punched and struck with rifle butts in the body, head and genitals.

After jumping out the window Mr Borisov, having sustained multiple fractures, was admitted to hospital, where he was kept in handcuffs and under permanent police guard. He remained in hospital until he was remanded in custody on 23 April 2004. On 24 April 2004 his lawyer requested a forensic medical examination. This was initially refused but was subsequently carried out on 7 May 2004. According to the medical report, two types of injuries were found on Mr Borisov's body, some of which resulted from his fall from his fourth-floor flat, while the others could have been caused either by the fall or by blows administered with a blunt object.

On 25 June 2004 the proceedings concerning Mr Borisov's allegations of ill-treatment were discontinued by the Voronezh deputy prosecutor on the ground that no offence had been

committed. The prosecutor found that he had violently resisted arrest and that the police officers had acted lawfully. Mr Borisov lodged an appeal on points of law which was dismissed on 13 September 2005 on the ground that there was insufficient evidence in the file to open a criminal investigation.

In 2007 a further complaint made by Mr Borisov to the military authorities was rejected. The military courts found that his injuries had been self-inflicted, being caused by his jumping out the window. In 2010 Mr Borisov sought to have a criminal investigation opened into his detention from 20 to 23 April 2004, but a decision was taken not to prosecute.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 5 § 1 (right to liberty and security), Mr Borisov alleged that he had been subjected to ill-treatment during the search of his home and complained of his detention between 20 and 23 April 2004, in so far as he had been unable to move around freely during the search and had been handcuffed and kept under guard in hospital.

Violation of Article 3 (investigation)
No violation of Article 3 (treatment)
Violation of Article 5 § 1

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 2,050 (costs and expenses)

Shumikhin v. Russia (no. 7848/06)

The applicant, Aleksandr Shumikhin, is a Russian national who was born in 1963. He is currently serving a prison sentence in a correctional colony in the Yamalo-Nenetskiy Autonomous region.

The case concerned the appeal proceedings in a criminal case against him.

Mr Shumikhin was convicted of murder and sentenced to life imprisonment in June 2005. Before the first-instance court he was represented by state-appointed counsel. Mr Shumikhin subsequently appealed against his conviction to the Supreme Court, requesting the court to appoint legal counsel to represent him. According to the Russian Government, his request was not received by the court. In November 2005 the Supreme Court examined his appeal while he was not assisted by counsel. It modified the legal classification of his offence but did not change his sentence.

Relying on Article 6 § 1 (right to a fair trial) in conjunction with Article 6 § 3 (c) (right to legal assistance of own choosing), Mr Shumikhin complained that he had not been provided with free legal assistance in the appeal proceedings.

Violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) – on account of the absence of legal assistance at the appeal hearing of 18 November 2005

Just satisfaction: EUR EUR 4,000 (non-pecuniary damage)

Maslák and Others v. Slovakia (no. 11037/12)

The applicants, Miroslav Maslák, Tomáš Ďuriš, and Vladimír Haviar, are Slovak nationals who were born in 1979, 1984, and 1983 respectively and live in Pružina (Slovakia).

The case concerned their complaint of having been denied a speedy review of the lawfulness of their pre-trial detention and an enforceable right to compensation in that respect.

All three applicants were arrested on charges of perjury and placed in detention on remand in April 2010. In April 2011 they were released, but immediately re-arrested on charges of extortion. In November 2011 they were released, the criminal proceedings are still pending.

During the first period of their detention on remand, all three applicants requested on two occasions – in May and December 2010 – to be released. The requests were dismissed, the relevant decisions eventually being upheld by the Constitutional Court in June and November 2011 respectively. In addition, all three applicants unsuccessfully challenged their remand of April 2011, the final decision being given by the Constitutional Court in December 2011.

Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), the applicants complained that the lawfulness of their detention had not been speedily reviewed. They further complained, under Article 5 § 5 (right to compensation for unlawful detention), that they had been denied an enforceable right to compensation in respect of the violation of their rights under Article 5 § 4.

Violation of Article 5 § 4
Violation of Article 5 § 5

Just satisfaction: EUR 6 500 (non-pecuniary damage) and EUR 1 500 (costs and expenses) to each applicant

D.Y.S. v. Turkey (no. 49640/07) *

The applicant, D.Y.S., is a Turkish national who was born in 1938 and lives in Istanbul.

The case concerned the fairness of a set of criminal proceedings before the Court of Cassation.

On 12 September 2001 D.Y.S. and four other individuals were charged with causing death through carelessness and negligence when a patient died from the effects of an operation carried out in the private hospital of which D.Y.S. was the director and senior doctor. In 2006 he was sentenced to one year and six months' imprisonment and ordered to pay a fine of 68 Turkish liras. He lodged an appeal on points of law and was represented in the proceedings by the lawyers K. Ersoylu, Z. Bayraktar and M. Aslan. In his opinion on the appeal, the Principal Public Prosecutor at the Court of Cassation recommended that the first-instance judgment be upheld. That opinion was notified to the lawyers of some of the accused, including Mr M. Altun. On 16 May 2007 the Court of Cassation upheld the decision complained of. D.Y.S.'s lawyers then lodged a request for rectification with the Principal Public Prosecutor at the Court of Cassation, arguing in particular that the prosecutor's opinion on the appeal had not been notified to them. Their request was rejected on the ground that Mr Altun had been notified of the opinion in question. The Principal Public Prosecutor had believed Mr Altun to be one of D.Y.S.'s lawyers, as a joint authority to act had been drawn up in Mr Altun's name on 19 February 2001 with a view to the representation of several individuals and legal entities – including the applicant – who planned to set up a health care company.

Relying on Article 6 § 1 (right to a fair trial), D.Y.S. complained in particular that he had not been informed of the opinion of the Principal Public Prosecutor in the proceedings before the Court of Cassation.

Violation of Article 6 § 1 – concerning the failure to communicate the opinion of the Principal Public Prosecutor

Just satisfaction: The Court held that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage alleged by the applicant.

Mamchur v. Ukraine (no. 10383/09)

The applicant, Aleksandr Mamchur, is a Ukrainian national who was born in 1954 and lives in Chernigiv (Ukraine).

The case concerned an access and custody dispute in respect of his daughter.

In 2005 Mr Mamchur's wife, who was suffering from cancer, moved out of his flat with their daughter A.M., born in 2002, and subsequently lived with her mother, V.K. Following his wife's death in June 2006, Mr Mamchur's mother-in-law took A.M. away from the town where he lived without informing him. She subsequently lodged a request to be appointed as A.M.'s tutor, which was granted by the district council in December 2006. The decision noted in particular that Mr Mamchur, because of a walking disability, was unable to take care of the child's upbringing.

Mr Mamchur brought court proceedings in 2007 seeking his daughter's return. His claim was rejected in a court decision eventually upheld by the Supreme Court in September 2008. In a separate set of proceedings he sought to have the decision granting tutelage to his mother-in-law annulled. His request was rejected in a decision eventually upheld by the Supreme Court in January 2009.

Relying in particular on Article 8 (right to respect for private and family life), Mr Mamchur complained in particular that the authorities had failed to protect his parental rights.

Violation of Article 8 – as regards the authorities' failure to take any meaningful action in order to ensure the applicant's access to his child and his ability to participate in her upbringing
Violation of Article 8 – as regards the unjustified placement of the applicant's child

Just satisfaction: EUR 15,000 (non-pecuniary damage) and EUR 4,000 (costs and expenses)

Temchenko v. Ukraine (no. 30579/10)

The applicant, Anatoliy Temchenko, is a Ukrainian national who was born in 1942 and lives in Kryvyy Rig (Ukraine).

The case concerned his pre-trial detention.

Mr Temchenko was arrested and placed in pre-trial detention in September 2009 on charges of having received bribes in his capacity as university rector. His detention was subsequently extended and his repeated requests for release were rejected. In May 2011 he was convicted of bribery and sentenced to five years and two months' imprisonment. On appeal the sentence was modified in October 2011 to five years' imprisonment, suspended, and he was released.

Suffering from a number of health problems, including heart disease, pancreatitis and diabetes, Mr Temchenko maintains that during his detention his check-ups were not carried out at reasonable intervals and that his treatment lacked consistency, with the result that his health deteriorated during the detention.

Relying in substance on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), Mr Temchenko complained that he had not been provided with adequate medical treatment during his detention and that he did not have an effective remedy in that respect. Relying on Article 5 § 1 (right to liberty and security), he complained in particular that between 29 January and 9 March 2010 his detention had not been covered by any court decision and that from 9 March 2010 until his conviction on 23 May 2011 his detention had been unlawful because the relevant court decision did not indicate any reasons or fixed any time-limits for his detention. He further complained that the overall length of his pre-trial detention had been unjustified, that the time taken to consider one of his requests for release had been excessive and that he had had no effective remedy at national level in respect of those complaints, relying on Article 5 § 3 (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 5 § 5 (right to compensation). Finally, he maintained that there had been a breach of Article 34 (right of individual petition) as the Ukrainian Government had not complied with an interim measure by the European Court of Human Rights (under Rule 39 of its Rules of Court) indicating to the Government to ensure his treatment in a specialised institution.

Violation of Article 3 – in respect of Ukraine's failure to safeguard the applicant's health in detention
Violation of Article 13 – on account of the lack of an effective remedy for the applicant's complaints under Article 3 concerning the adequacy of medical assistance
Violation of Article 5 § 1 – in respect of the applicant's detention from 29 January 2010 to 23 May 2011
Violation of Article 5 § 3 – in respect of the whole period of the applicant's pre-trial detention
Violation of Article 5 § 4 – in respect of the authorities' failure to examine the applicant's request for release of 31 May 2010 in due time
Violation of Article 5 § 5
No violation of Article 34

Just satisfaction: EUR 16,000 (non-pecuniary damage) and EUR 3,000 (costs and expenses)

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