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

Press Release
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Judgments and decisions of 28 April 2016

The European Court of Human Rights has today notified in writing eight Chamber judgments[1] and six decisions[2]:

the eight judgments are summarised below;

the six decisions can be consulted on Hudoc and do not appear in this press release.

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

Just Satisfaction

Winterstein and Others v. France (application no. 27013/07)*

The applicants are 25 French nationals acting on their own behalf and on behalf of their minor children.

The case concerned the eviction proceedings brought against a number of traveller families who had been living in the same place for many years. The domestic courts had issued orders for the families' eviction, on pain of penalties for non-compliance.

Relying in particular on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicants complained that the order requiring them to vacate the land they had occupied for many years amounted to a violation of their right to respect for their private and family life and their homes.

In its judgment on the merits of 17 October 2013 the Court held that there had been a violation of Article 8 in respect of all the applicants, in so far as they had not had the benefit, in the context of the proceedings for their eviction from the land they had been occupying in the locality of Bois du Trou-Poulet in Herblay, of an examination of the proportionality of the interference in compliance with the requirements of Article 8. It also held that there had been a violation of Article 8 in respect of those applicants who had applied for relocation on family plots, on account of the failure to give sufficient consideration to their needs. It had also decided that the issue of the application of Article 41 (just satisfaction) of the European Convention was not ready for examination and postponed its assessment of that issue to a later date.

Just satisfaction: 600 euros (EUR) to Catherine Herbrecht, EUR 2,000 each to Pierre Mouche, Rosita Ricono, Paul Mouche and Gypsy Debarre, EUR 2,000 each to the couples consisting of Thierry Lefèvre and Sophie Clairsin and Patrick Lefèvre and Sylviane Huygue-Bessin, and EUR 3,000 to Solange Lefèvre in respect of pecuniary damage; EUR 7,500 each to Laetitia Winterstein, Germain Guiton and Michelle Perioche, EUR 7,500 jointly to Mario Guiton and Stella Huet, EUR 15,000 each to Martine Payen, Catherine Herbrecht, Catherine Lefèvre, Sabrina Lefèvre, Solange Lefèvre and Sandrine Plumerez, EUR 15,000 each to the couples consisting of Thierry Lefèvre and Sophie Clairsin and Patrick Lefèvre and Sylviane Huygue-Bessin, EUR 20,000 each to Pierre Mouche, Paul Mouche,

[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.

Franck Mouche, Gypsy Debarre, Jessy Winterstein, Rosita Ricono, Philippe Lefèvre and Vanessa Ricono, and EUR 20,000 jointly to Steeve Lefèvre and Graziella Avisse in respect of non-pecuniary damage; and EUR 5,000 jointly to all applicants in respect of costs and expenses.

Buchleither v. Germany (no. 20106/13)

The applicant, Lucian Buchleither, is a German national who was born in 1965 and lives in Rastatt (Germany). The case concerned his complaint about the suspension of contact between him and his daughter for an indefinite period of time.

Mr Buchleither and the mother of his daughter, with whom he had not been married, separated shortly after the child's birth in 2003. After previous conflicts over contact arrangements and the suspension of contact for over a year, Mr Buchleither applied to the courts in January 2010 requesting that contact be resumed. In April 2010 the family court granted him contact every two weeks as an interim measure. However, no contact took place subsequently, and in September 2010 the contact arrangement was again suspended at the mother's request pending the main proceedings.

In the main proceedings, in April 2011, the family court again granted Mr Buchleither contact every two weeks, appointing a guardian who was given specific directions as to how the meetings were to be organised. On appeal, after having heard both parents, the child and an expert, the appeal court, in October 2012, rejected Mr Buchleither's request, suspending all contact between him and his daughter for an indefinite period of time. The court considered that contact was not in the child's best interest. It noted in particular that after the child had not had any contact with her father for four years he had become a stranger to her; she had clearly expressed that she did not want to see her father, wishing to avoid a conflict of loyalty between her parents. On 6 February 2013 the Federal Constitutional Court declined to consider Mr Buchleither's constitutional complaint.

Mr Buchleither complained, in particular, that the indefinite suspension of his contact to his daughter had violated his rights under Article 8 (right to respect for private and family life) of the Convention.

No violation of Article 8

Cincimino v. Italy (no. 68884/13)*

The applicant, Ms Rosalia Cincimino, is an Italian national who was born in 1964 and lives in Palermo.

The case concerned the fact that Ms Cincimino had been prevented from meeting her daughter for approximately ten years owing to a court order barring her from any contact with the child.

Ms Cincimino and her husband separated in 2001. The applicant's home was designated as the main residence of their daughter, born on 6 February 2000. However, on 26 May 2003 the District Court ordered that the child be taken away from Ms Cincimino's home and that the child's father be given custody. The applicant was granted access two afternoons a week, with a social worker present. The District Court based its decision on expert reports according to which, among other findings, it was desirable for the child to be separated from Ms Cincimino, who needed psychological counselling and had difficulty controlling her emotions, and whose behaviour was impairing the child's psychological development. The court ordered the applicant to undergo a course of psychological therapy in order to improve her relationship with her daughter. On 16 December 2003 the District Court decided to suspend Ms Cincimino's parental responsibility and to bar her from any direct contact with her daughter, authorising only one meeting a week with a social worker present. In its reasoning the District Court observed in particular that the applicant had not complied with its previous order, as she had gone to the home of her parents-in-law to see her daughter and had not

duly attended the course of psychological counselling. On 5 October 2005 the court made a fresh order declaring that Ms Cimincino no longer had parental responsibility and was barred from any contact with her daughter, on the grounds that there was no longer any prospect of an improvement in the mother-daughter relationship. In support of its decision the District Court noted, among other points, that the applicant had attempted to turn the child against her father and had a negative attitude towards the social workers, that she had refused to follow a course of psychological counselling and that her daughter had forged very close links with her father. That decision was upheld by the Palermo Court of Appeal on 27 February 2006. The Court of Appeal noted in particular that Ms Cincimino was preventing the child from developing in a healthy and well-adjusted manner.

On 6 June 2009 Ms Cincimino applied to have her parental responsibility restored, claiming to have followed a course of psychotherapy with two psychiatrists, and producing a certificate stating that she was not suffering from any disorder. However, her application was rejected by a decision of 29 March 2010 which was upheld on appeal. On 1 February 2012 Ms Cincimino applied again to the District Court, requesting it to reconsider its 2005 decision. The District Court rejected the application, finding, in particular, that the applicant's parental responsibility had been withdrawn because of her lack of empathy and her narcissistic personality. The District Court further held that there was no need to order a further expert report. On 11 February 2013 Ms Cincimino appealed against that ruling, arguing in particular that the expert reports on which the court had based its decision dated back to 2002, 2003 and 2006. She requested a new expert opinion. In a judgment of 11 April 2013 the Court of Appeal dismissed her appeal.

Relying in particular on Article 8 (right to respect for private and family life), Ms Cincimino complained that the authorities had barred her from any contact with her daughter without taking the appropriate steps to ensure that the ties between them had been maintained, and that she had been prevented from fulfilling her role as a mother.

Violation of Article 8

Just satisfaction: EUR 32,000 (non-pecuniary damage) and EUR 20,000 (costs and expenses)

Balajevs v. Latvia (no. 8347/07)

The applicant, Murads Balajevs, is a Latvian national who was born in 1966 and is currently in detention in Daugavpils (Latvia). The case concerned his complaint of having been ill-treated by detainee escort officers.

Mr Balajevs was transferred from prison to Riga Regional Court on 8 May 2006, where he was placed in a holding cell. Suffering from pain and nausea, he asked the detainee escort officers from the State Police to call an ambulance, whose staff gave him painkillers for kidney stones and a renal colic.

According to his submissions, Mr Balajevs again asked the officers to call an ambulance in the afternoon of the same day, which they refused to do. Being in pain, he continued to ask for medical assistance. Eventually one officer entered the cell, kicking him in the chest, as a result of which he fell to the floor. The officer kicked him again when he tried to get up. Two other officers joined and forced him onto the floor, kicking him several times in the back to keep him quiet. According to the submissions of the Government, Mr Balajevs shouted and cursed when asking the officers for the second time to call an ambulance. One of the officers therefore entered the cell to calm him down. As Mr Balajevs attempted to hit him, the officer forced him onto the floor, using physical force and a restraint technique.

Eventually the officers called the ambulance for a second time and Mr Balajevs was taken to a prison hospital, where he stayed for about ten days, having been diagnosed with a fracture to a lumbar vertebra and contusion of one kidney.

Following the incident of 8 May 2006 Mr Balajevs complained about it to the Internal Security Office of the State Police. That office opened criminal proceedings on suspicion of the offence of exceeding official authority in June 2006. In October 2006 the senior inspector closed the investigation, concluding that there were no constituent elements of an offence in the officers' actions. Following Mr Balajevs' appeals the investigation was subsequently reopened and closed again on two further occasions, the last decision being upheld in 2009.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Balajevs complained of having been ill-treated by the three detainee escort officers and maintained that the investigation into the incident had not been thorough and impartial, and that it had taken an unreasonably long time.

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

Just satisfaction: EUR 5,000 (non-pecuniary damage)

Čamans and Timofejeva v. Latvia (no. 42906/12)

The applicants, Genādijs Čamans and Raisa Timofejeva, are Latvian nationals who were born in 1970 and 1956 respectively and live in Daugavpils (Latvia). The case concerned their complaint that they had been deprived of their liberty during an inspection by the State Revenue Service of the company by which they had both been employed.

The Bureau for the Prevention and Combatting of Corruption suspected that contraband goods, namely tobacco and alcohol, were stored on the premises of the company M., for which Mr Čamans was working as a guard and Ms Timofejeva as an accountant. In that context, the State Revenue Service carried out an inspection at the company's premises on 16 November 2011; it started in the afternoon of that day and lasted until 18 November 2011. In the early morning of 17 November an investigator opened criminal proceedings and decided to conduct an inspection of the crime scene.

According to Mr Čamans, after he had gone to one of the buildings of the company to switch on the heating, at about 2.30 a.m. on 17 November 2011, officers of the Revenue Service handcuffed him and took his mobile phone. He was then under their constant watch and was not permitted to use the telephone. At about 3 a.m. he was asked to participate in the inspection, and he remained handcuffed until 8 a.m. in the morning. According to the Government, shortly after the criminal proceedings had been opened, the officers found Mr Čamans in a building which smelled of spirits and was filled with large plastic tanks. He was operating various taps and valves and the officers asked him to stop what he was doing. As he refused, they handcuffed him.

According to Ms Timofejeva, when the officers arrived at the company's premises in the afternoon of 16 November, they informed her that she was not under arrest, but she was asked not to leave the site. Eventually she left at about 7.30 p.m., following the advice by the company's lawyer who told her that she had the right to leave. At his request she returned to the site later in the evening, and subsequently the officers of the Revenue Service did not allow her to leave the company's premises until the early morning of 18 November.

Mr Čamans was subsequently charged with failing to report a serious crime and attempting to conceal evidence of a crime. Eventually the proceedings were discontinued.

Both applicants lodged complaints with the prosecution service regarding the events of 16 to 18 November 2011, alleging that they had been deprived of their liberty and that their freedom of

movement had been restricted. The prosecutor dismissed their complaints and their appeals were rejected, those decisions being eventually upheld in March 2012.

Relying in particular on Article 5 § 1 (right to liberty and security), the applicants complained that they had been unlawfully deprived of their liberty during the inspection.

Violation of Article 5 § 1 – in respect of Mr Čamans with regard to the period of time from about 2.40 to 8 a.m. on 17 November 2011
No violation of Article 5 § 1 – in respect of Mr Čamans with regard to the remaining period of time
No violation of Article 5 § 1 – in respect of Ms Timofejeva

Just satisfaction: EUR 1,000 (non-pecuniary damage) and EUR 1,135.44 (costs and expenses) to Mr Čamans

Sulejmani v. "The former Yugoslav Republic of Macedonia" (no. 74681/11)

The applicant, Osman Sulejmani, is a Macedonian national who was born in 1958 and lives in Tetovo ("The former Yugoslav Republic of Macedonia"). The case concerned his complaint about the confiscation of his vehicle in criminal proceedings against the vehicle's previous owner.

In October 2008 the Ministry of the Interior temporarily seized a concrete mixing and transport lorry, which Mr Sulejmani had bought in 2006, and its registration certificate, in order to examine the vehicle's chassis. In February 2010 the previous owner of the vehicle was acquitted of the charges of having forged the vehicle's chassis number. Mr Sulejmani subsequently requested that the vehicle be returned to him. The first-instance court found that there were no grounds for the confiscation of his vehicle and it ordered that the registration certificate be returned to him. However the judgment was quashed and the confiscation of the vehicle and its registration certificate was again ordered by the courts, the decision being upheld on appeal in May 2011.

Mr Sulejmani complained that the confiscation of his vehicle had been in breach of his rights under Article 1 of Protocol No. 1 (protection of property).

No violation of Article 1 of Protocol No. 1

Vasilevski v. "The former Yugoslav Republic of Macedonia" (no. 22653/08)

The applicant, Ljupčo Vasilevski, is a Macedonian national who was born in 1963 and lives in Kavadarci ('the former Yugoslav Republic of Macedonia'). The case concerned the confiscation of his lorry in criminal proceedings which had concerned the lorry's previous owner.

In September 2004 Mr Vasilevski bought a lorry from the company M. and subsequently registered the lorry in his name. However, in June 2006 the lorry was confiscated from him on the basis of a court order which had been issued in September 2003 in the context of criminal proceedings brought against the previous owner of the lorry for smuggling sugar. In September 2006 Mr Vasilevski's objection to the enforcement of the confiscation order was rejected as inadmissible, the criminal courts finding that he had no procedural standing. His appeal was dismissed in December 2006 for the same reason.

In parallel, Mr Vasilevski brought civil proceedings requesting that he be declared the owner of the lorry and that the State restore it to his possession. Notably submitting that he was making his living off the lorry, he requested an injunction restricting the State from selling the lorry until resolution of the dispute. His claim was dismissed by the civil courts at first and second instance (in May and October 2007). The courts, although establishing that Mr Vasilevski was the *bona fide* owner of the lorry as he had no knowledge when buying it that it had been used to commit an offence, found that the confiscation had been mandatory under the relevant domestic law.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Vasilevski complained about being deprived of his lorry.

Violation of Article 1 of Protocol No. 1

Just satisfaction: The Court held that "The former Yugoslav Republic of Macedonia" was to return to Mr Vasilevski the confiscated lorry in the state at the time of its confiscation; and that failing such restitution, "The former Yugoslav Republic of Macedonia" was to pay Mr Vasilevski EUR 5,400 in respect of pecuniary damage.

Bagiyeva v. Ukraine (no. 41085/05)

The applicant, Tetyana Bagiyeva, is a Ukrainian national who was born in 1958. The case concerned a police search of her flat in Kyiv.

On 11 March 2005 an investigator, accompanied by the police, carried out a search of Ms Bagiyeva's flat in the context of criminal proceedings brought against her ex-husband for driving licence forgery. The national courts had issued a warrant authorising the search of her flat, considered to be the permanent residence of Ms Bagiyeva's ex-husband, for forged documents as well as the means of and instruments for forging documents. The search was carried out in Ms Bagiyeva's absence, the police having to break down the door to her flat in order to enter. A number of items were seized, including floppy discs, compact discs, vehicle registration certificates, a box containing cash, a painting and an icon.

Ms Bagiyeva subsequently made a complaint to the law-enforcement authorities, alleging that the police officers had, firstly, not contacted her on the day of the search (she had been out of town but reachable on her mobile) and, secondly, that some of her property (notably, four mobile phones), not included on the list of seized items, had disappeared during the search.

In June 2005 the prosecuting authorities refused to commence criminal proceedings in relation to the actions by the police during the search of Ms Bagiyeva's flat, referring to statements of three police officers that they had contacted Ms Bagiyeva to inform her about the search and had only broken down the door to her flat when she refused to appear. She challenged this decision in court, without success.

The investigation concerning the disappearance of her property, repeatedly criticised by the supervising prosecutors for not being carried out thoroughly and comprehensively, is still pending. In the context of this investigation, in November and December 2005, certain seized items including the painting, the icon and the missing mobile phones were returned to Ms Bagiyeva.

Relying on Article 8 (right to respect for private and family life and the home) and Article 13 (right to an effective remedy), Ms Bagiyeva complained about the search of her flat as well as the authorities' failure to examine and effectively investigate her complaints on the matter.

Violation of Article 8
Violation of Article 13

Just satisfaction: Ms Bagiyeva did not submit a claim for just satisfaction within the fixed time-limit.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)

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.