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

Press Release
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Judgments of 28 June 2016

The European Court of Human Rights has today notified in writing 14 judgments[1].

12 Chamber judgments are summarised below; for one other, in the case of *Halime Kılıç v. Turkey* (application no. 63034/11), a separate press release has been issued;

one Committee judgment, which concerns issues which have already been submitted to the Court, can be consulted on Hudoc and does not appear in this press release.

The judgments summarized below are available in English only.

Jakeljić v. Croatia (application no. 22768/12)
Radomilja and Others v. Croatia (no. 37685/10)

The cases concerned a complaint about the national courts' refusal to acknowledge ownership of land acquired by adverse possession.

The applicants in the first case, Jakov Jakeljić and Ivica Jakeljić, are Croatian nationals who live in Split (Croatia). The applicants in the second case, Gašpar Perasović (now deceased), Mladen Radomilja, Ivan Brčić, Vesna Radomilja, Nenad Radomilja, and Marin Radomilja, are Croatian nationals who live/d in Stobreč (Croatia).

The applicants in both cases had all bought plots of land from various individuals, which were recorded in the land register in the name of the local authorities. Thus, in April 2002 they brought a civil action against the local authorities, seeking a declaration of their ownership of three plots of land (in the first case) and five plots of land (in the second case). They claimed in particular that the property had been in the possession of their legal predecessors for more than 100 years (in the first case) and for more than 70 years (in the second case) and, given that the statutory period for acquiring ownership by adverse possession had elapsed, they had validly acquired ownership of the land.

The first-instance court ruled in their favour in June 2007 and May 2007, respectively. These judgments were, however, reversed on appeal, the second-instance court holding that the applicants' predecessors had not complied with the 40-year time-limit for acquiring ownership by adverse possession. The second-instance court notably found that the applicants' predecessors had only been in possession of the land (continuously and in good faith) since 1912 and that the running of the statutory time-limit had been interrupted in April 1941, when the legislation of the former Yugoslavia had prohibited the acquisition of ownership of socially owned property by adverse possession, and had only started to run again after October 1991 when that provision was repealed by Parliament. The applicants' constitutional complaints were subsequently dismissed in September 2011 and September 2009, respectively.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, the applicants complained that, in dismissing their claims, the domestic courts had

[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

misapplied the relevant domestic law in their cases, as the statutory time-limit for acquiring ownership by adverse possession had been 20 and not 40 years.

Violation of Article 1 of Protocol No. 1 – in both cases

Just satisfaction: In both cases the Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. It further awarded 2,000 euros (EUR), jointly, to the applicants in the case of *Jakeljić*, and EUR 2,000, jointly, to the applicants in the case of *Radomilja and Others*, for costs and expenses.

Radobuljac v. Croatia (no. 51000/11)

The case concerned an advocate's complaint about being fined for contempt of court.

The applicant, Silvano Radobuljac, is a Croatian national who was born in 1963 and lives in Zagreb.

Working as an advocate in civil proceedings concerning payment of a certain amount of money, Mr Radobuljac could not attend one of the hearings on the case – which took place in December 2009 – because his car had broken down. The judge hearing the case decided to suspend the proceedings for three months. Mr Radobuljac then lodged an appeal on behalf of his client, challenging the judge's decision on the grounds that one of the statutory conditions for suspending the proceedings had not been met, namely that the opposing party had not asked for the suspension. He explained why he had not been able to attend the hearing but also referred to the judge's previous conduct in the proceedings describing it as unacceptable and stated that the hearings held thus far had been devoid of substance. In January 2010 the judge – who had made the decision to suspend the civil proceedings – fined Mr Radobuljac 1,500 Croatian kunas (approximately 205 euros at the time) for making statements in the appeal which had been a serious insult to both the court and the judge. Mr Radobuljac's appeal against that decision was dismissed in July 2010, the County Court finding that his statements had gone beyond the limits of an advocate's role in judicial proceedings. His constitutional complaint was also dismissed in January 2011.

Relying on Article 10 (freedom of expression) of the European Convention, Mr Radobuljac complained about the decision to fine him for contempt of court, emphasising that he had only criticised the conduct of the judge in that particular case, and had not made any allusion to the judiciary as a whole.

Violation of Article 10

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Radobuljac. It further awarded him EUR 205 for pecuniary damage and EUR 13 for costs and expenses.

Just Satisfaction

Magyar Keresztény Mennonita Egyház and Others v. Hungary (nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41553/12, 54977/12, and 56581/12)

The case concerned the new Hungarian Church Act.

The applicants are various religious communities, some of their ministers and some of their members. Prior to the adoption of a new Church Act, which entered into force in January 2012, the religious communities had been registered as churches in Hungary and received State funding. Under the new law, which aimed to address problems relating to the exploitation of State funds by certain churches, only a number of recognised churches continued to receive funding. All other

religious communities, including the applicants, lost their status as churches but were free to continue their religious activities as associations.

Following a decision of the Constitutional Court, which found certain provisions of the new Church Act to be unconstitutional – in particular the fact that only incorporated churches were entitled to one percent of the personal income tax which could be earmarked by believers as donations – new legislation was adopted in 2013, under which religious communities such as the applicants could again refer to themselves as churches. However, the law continued to apply in so far as it required the communities to apply to Parliament to be registered as incorporated churches if they wished to regain access to the monetary and fiscal advantages to which they had previously been entitled.

Relying in particular on Article 11 (freedom of assembly and association) read in the light of Article 9 (freedom of thought, conscience and religion), the applicants complained of their deregistration under the new law and of the discretionary reregistration of churches.

In its principal judgment of 8 April 2014 the Court found a violation of Article 11 read in the light of Article 9 and held that the finding of a violation constituted sufficient just satisfaction in respect of the claims of non-pecuniary damage of five of the individual applicants.

Today's judgment concerns the question of the application of Article 41 (just satisfaction) of the Convention.

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Szűcs (*Út és Erény Közössége Egyház*, application no. 41553/12). It further held that the questions of the application of Article 41 in respect of application *Magyarországi Evangéliumi Testvérközösség* (no. 54977/12) was not ready for decision. The Court lastly held that Hungary was to pay the remaining applicants the following amounts:

(i) in respect of pecuniary and non-pecuniary damage:

EUR 60,000 to *ANKH Az Örök Élet Egyháza* (no. 41553/12)*;*
EUR 90,000 to *Dharmaling Magyarország Buddhista Egyház* (no. 41553/12)*;*
EUR 140,000 to *Mantra Magyarországi Buddhista Egyháza* (no. 41553/12);
EUR 45,000 to *Szangye Menlai Gedün, a Gyógyító Buddha Közössége Egyház* (no. 41553/12);
EUR 60,000 to *Univerzum Egyháza* (no. 41553/12);
EUR 105,000 to *Usui Szellemi Iskola Közösség Egyház* (no. 41553/12); and
EUR 40,000 to *Út és Erény Közössége Egyház* (no. 41553/12).

(ii) in respect of costs and expenses:

EUR 2,000, each, to *ANKH Az Örök Élet Egyháza*, *Dharmaling Magyarország Buddhista Egyház*, *Mantra Magyarországi Buddhista Egyháza*, *Szangye Menlai Gedün, a Gyógyító Buddha Közössége Egyház*, *Univerzum Egyháza*, *Usui Szellemi Iskola Közösség Egyház*, and *Út és Erény Közössége Egyház* (no. 41553/12); and
EUR 800, jointly, to *Szim Shalom Egyház* (application no. 41150/12) and *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* (no. 41155/12).

Özçelik v. the Netherlands (no. 69810/12)

The applicant, Isteyfo Özçelik, is a Netherlands national who was born in 1959 and lives in Enschede (the Netherlands). The case concerned his complaint about his continued detention for shoplifting.

Mr Özçelik was convicted of shoplifting in May 2010. He was placed in a Persistent Offenders Institution for two years, on the ground that he was a drug addict who would not voluntarily cooperate with treatment plans. His detention was reviewed and prolonged in December 2010 and then in June 2011, the courts finding that there was still a high risk of him reoffending if released. His

appeal against the June 2011 decision was eventually upheld on 10 May 2012, the Court of Appeal accepting that Mr Özçelik was no longer addicted and there was a reduced risk of him offending. The Court of Appeal also delivered a decision on 16 May 2012 finding that Mr Özçelik's detention had not been dealt with speedily, as required by the European Convention on Human Rights, because it had taken more than ten months after his appeal had been lodged before it was dealt with on the merits. Mr Özçelik was not however awarded compensation as the Court of Appeal considered that no redress going beyond the finding of a violation of the European Convention was necessary. Mr Özçelik was released the same day.

Relying in particular on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), Mr Özçelik alleged that it had taken the Court of Appeal too long to decide his appeal of June 2011 against the continuation of his detention. Further relying on Article 5 § 5 (right to compensation), he also complained that, although the Court of Appeal had recognised a violation of his rights, it had failed to order his immediate release or to award him compensation.

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

Just satisfaction: EUR 1,500 (non-pecuniary damage)

Janusz Wojciechowski v. Poland (no. 54511/11)

The applicant, Janusz Wojciechowski, is a Polish national who was born in 1950 and lives in Warsaw. The case concerned his complaint about inadequate conditions of detention.

After a conviction Mr Wojciechowski was detained from June 2007 until January 2009, first in a semi-open facility and then in a closed-type facility, namely Koszalin Remand Centre. In 2007 and 2009 he lodged a number of complaints with various authorities – including the Ombudsman, the Ministry of Justice and the relevant penitentiary court – and brought civil proceedings in which he claimed compensation, alleging: deplorable conditions of detention (notably, on account of overcrowding) in Koszalin Remand Centre; inadequate medical care for a skin condition he had contracted in the remand centre through a dirty and damp mattress; and unreasonable restrictions on his attending Sunday Mass in the remand centre. His complaints were rejected by the authorities as ill-founded in May and June 2009. However, in December 2010 the first-instance court found that his detention in Kozalin Remand Centre had been marked by serious overcrowding for a period of 309 days and awarded him PLN 5,000 (approximately 1,200 euros). The rest of his complaints were rejected. In particular, as concerned the allegation of inadequate medical care, the courts relied on a report drawn up by an expert dermatologist appointed during the proceedings, which concluded that Mr Wojciechowski had not contracted his skin condition in the remand centre and that he had received medical treatment which was typically prescribed in such cases. As concerned the restrictions on his right to practice his religion, the court found that Mr Wojciechowski had been authorised to attend Sunday Mass a total of four times in September and November 2008, as confirmed by the prison chaplain. This first-instance judgment was upheld on appeal in April 2011.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Wojciechowski notably alleged that his conditions of detention had been inadequate.

Violation of Article 3 – concerning the conditions of detention

Just satisfaction: EUR 1,900 (non-pecuniary damage)

Józef Woś v. Poland (no. 6058/10)

The applicant, Józef Kazimierz Woś, is a Polish national who was born in 1966 and lives in Węglówka (Poland). The case concerned an allegation of excessive use of force by the police.

On 26 January 2009, Mr Woś and his wife were driving from their home to another village when they were stopped by police officers who had noted that the car was missing a rear light and the registration plate was not lit. According to Mr Woś, the police conducted a further two hour inspection of the car with a view to fining his wife as driver of the car. Mr Woś, who was anxious and upset by that time and considered that the police wanted to bribe him and his wife, referred to the police as beggars. After making that comment, he claims that he was apprehended by force, the police using a whole can of pepper spray against him. He was eventually taken into police custody and was released the following day. After his release he was examined at a hospital, where he was diagnosed with bruising to his right hand and a chemical burn to his right eye.

On 28 January 2009 Mr Woś lodged a complaint with both the District Court and the prosecuting authorities concerning his arrest, reporting the police officers for abuse of power. After having questioned all those who had participated in the incident, the court established that the police had responded to Mr Woś' insult by warning him that he would be arrested for insulting police officers. As claimed by the police and accepted by the court, Mr Woś had then pushed a police officer and attempted to run away, resisting arrest until one officer had pushed him forcefully to the ground and the other applied pepper spray. The court therefore dismissed Mr Woś' complaint, finding that at the time of his arrest there were grounds to suspect him of having committed an offence. In response to the report of alleged abuse of power, the District Prosecutor opened and later discontinued an investigation in April 2009, on the ground that the police had had the right to use force given that Mr Woś had not obeyed their order and had tried to run away. The decision to discontinue the investigation was ultimately upheld on appeal by the district court in August 2009.

In subsequent proceedings, Mr Woś was charged with offending police officers on duty and kicking a police officer. The proceedings were eventually discontinued, on the ground that Mr Woś' acts had not constituted offences because of the minimal harm caused to the public.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Woś complained that the police had used excessive force against him and that the investigation into his allegations had been inadequate.

No violation of Article 3

Malec v. Poland (no. 28623/12)

The applicant, Jarosław Malec, is a Polish national who was born in 1973 and lives in Bibice (Poland). The case concerned his contact rights to his daughter.

Mr Malec separated from his wife in 2008, when their daughter was four years' old, and they divorced in January 2012. They initially agreed on access arrangements but problems arose from November 2010 when the first interim contact order was issued during the divorce proceedings. From then on, Mr Malec's contact with his daughter became irregular and conflict between the parents escalated. Subsequently, between May 2011 and January 2012 almost no contact took place. After that, contact took place irregularly, usually on weekdays and without any overnight stays.

Starting in December 2010, Mr Malec filed over 50 enforcement claims, complaining about his ex-wife's refusal to comply with contact orders. They eventually resulted in the mother being ordered to comply with the access arrangements and her being imposed with fines on two occasions. In particular, following a request of March 2011, which was examined by a district court in October 2011, the mother was ordered to comply with a contact order, but as she continued to prevent Mr Malec from having any contact with his daughter, the court imposed a fine on her in March 2012. Two other sets of enforcement proceedings, initiated by Mr Malec in August 2011 and February 2012, were eventually discontinued in April 2013 and February 2013, respectively.

In the meantime, in 2012 Mr Malec's ex-wife had applied for a change to the access arrangements as specified in the divorce judgment, submitting that her daughter did not wish to stay overnight at her father's house. In the ensuing proceedings, an expert report was drawn up which concluded that both parents loved their daughter and were able to attend to her needs, but that the child was not able to cope with the conflict between her parents and that therefore family therapy was indispensable. Most recently, in April 2013 a new contact order was issued, according to which Mr Malec could meet his daughter on certain days between 3 p.m. and 6 p.m.

Relying in particular on Article 8 (right to respect for private and family life), Mr Malec alleged that the Polish authorities had failed to take effective steps to enforce his right to have contact with his daughter.

Violation of Article 8

Just satisfaction: EUR 7,000 (non-pecuniary damage) and EUR 5,000 (costs and expenses)

Dimović v. Serbia (no. 24463/11)

The applicants, Ivica Dimović and Jožef Dimović, are Serbian nationals who were born in 1980 and 1964, respectively, and live in Hajdukovo (Serbia). The case concerned their complaint about the unfairness of criminal proceedings brought against them for the theft of a wine press.

The applicants and their friend, S.K., were indicted in February 2007 for allegedly having stolen a wine press. They were acquitted at first instance on the ground that no evidence had been admitted during the trial to suggest that they had committed theft, the applicants maintaining that they had found the press abandoned. On appeal by the prosecution, a retrial was ordered in May 2008 on the ground that the first-instance court had failed to take into account a statement given to the police by S.K. in January 2006 confessing to having stolen the press along with the applicants. S.K. had, however, subsequently revoked his confession claiming that it had been given under the influence of alcohol. Following a retrial, the applicants were found guilty in February 2009, the court primarily relying on S.K.'s statement made in January 2006. Ivica Dimović was sentenced to an effective prison term of six months and Jožef Dimović to a suspended prison term of six months. This judgment was upheld on appeal in July 2009 and the Supreme Court rejected the applicants' further appeal on points of law in October 2010. The applicants' constitutional appeal, alleging that their conviction had been based on the testimony of a person whom they had never had a chance to cross-examine and who had, in any event, revoked it, was also rejected in October 2010.

In the meantime, the proceedings against S.K. had been discontinued in December 2008 as he had died a few months earlier.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), the applicants complained that their convictions had been based solely on the testimony of S.K. whom they had never had a chance to cross-examine and who, in any event, had subsequently revoked his statement.

Violation of Article 6 §§ 1 and 3 (d)

Just satisfaction: EUR 3,000 to Ivica Dimović and EUR 2,000 to Jožef Dimović for non-pecuniary damage and EUR 5,282.30, jointly to both applicants, for costs and expenses

Čičmanec v. Slovakia (no. 65302/11)

The applicant, Ján Čičmanec, is a Slovak national who was born in 1957 and lives in Sebedražie (Slovakia). The case essentially concerned a property dispute over a track on land along a railway line.

In 1992 the local authorities temporarily assigned to Mr Čičmanec's father the use, free of charge, of some land running along both sides of a railway line in Sebedražie. The title of this land was later transferred to Mr Čičmanec.

In April 2001 a person who had been assigned land neighbouring Mr Čičmanec's brought civil proceedings against him, essentially complaining about a fence and a gate Mr Čičmanec had built in 2000 blocking access to a track which ran across his land and which gave access to certain plots assigned to other individuals along the railway line. In a final and binding ruling of March 2010 Mr Čičmanec was ordered not to obstruct passage across the track of land. Proceedings were also brought against him for the remuneration of a court-appointed expert and other costs and he was eventually ordered to pay 475 euros in February 2010; this ruling became final and binding in May 2010. The enforcement of both these rulings is apparently still pending.

Mr Čičmanec subsequently brought two sets of constitutional proceedings in May and July 2010 contesting the course and outcome of the proceedings before the lower courts. They ended with the Constitutional Court declaring both complaints inadmissible in April 2011.

Relying in particular on Article 6 § 1 (right to a fair hearing within a reasonable time), Mr Čičmanec made two complaints about the fairness and length of the proceedings: first, he alleged that observations had not been communicated to him which had been made by the lower courts in reply to his constitutional complaint of May 2010; and, second, he alleged that the length of the proceedings, including their phase before the Constitutional Court, had been excessive.

Violation of Article 6 § 1 (fair hearing)
Violation of Article 6 § 1 (length of proceedings)

Just satisfaction: The Court held that the finding of a violation of Mr Čičmanec's right to a fair hearing constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by him in that respect. It further awarded him EUR 2,000 in respect of the non-pecuniary damage sustained on account of the length of the proceedings, as well as EUR 500 in respect of costs and expenses

Silášová and Others v. Slovakia (no. 36140/10)

The applicants are 20 Slovak nationals, born between and 1936 and 1990 and living in Žilina, Turie, Bytča and Nemecká nad Hronom (Slovakia). The case concerned their complaint about the compulsory letting of their land.

The applicants are the owners of land situated in the municipality of Žilina, the title to which they inherited. In 1948 the State had put the land in question at the disposal of an agricultural cooperative, which in 1987 designated part of it as an "allotment colony", consisting of individual allotments which were put at the disposal of private gardeners. Following the political changes in the former Czechoslovakia, the Land Ownership Act was enacted in 1991, under which the gardeners acquired a tenancy right in respect of the land. The Allotment Act, which replaced the Land Ownership Act and entered into force in 1997, also imposed a compulsory tenancy arrangement in favour of the gardeners and regulated the rent to be paid.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained about the limited rent for the compulsory letting of their land. They argued in particular that the rent which they had been entitled to obtain under the Allotment Act as in force until 31 March 2011 had been disproportionately low and had been determined with blatant disregard to the land's actual value. After that date, an amendment had entered into force which had adjusted the rent payable to a level commensurate with the market rent.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 67,030 in total in respect of pecuniary damage (for further details concerning each applicant's award, please see the full text of the judgment), EUR 200 to each of the applicants in respect of non-pecuniary damage, and EUR 2,000 to the applicants jointly in respect of costs and expenses

O'Neill and Lauchlan v. the United Kingdom (nos. 41516/10 and 75702/13)

The applicants, Charles Bernard O'Neill and William Hugh Lauchlan, are British nationals who were born in 1962 and 1976 respectively and are currently detained in HMP Glenochil and HMP Edinburgh respectively (both in Scotland, the UK). The case concerned their complaint about the excessive length of criminal proceedings brought against them.

In August 1998 the applicants were convicted of various sexual offences and sentenced to periods of imprisonment of eight and six years respectively. In September 1998, while serving their sentence, both applicants were detained by the police and interrogated in relation to the disappearance and suspected murder of a woman, A.M., with whom they had shared an apartment. Neither was charged or arrested following the interviews due to insufficient evidence.

In April 2005, charges were brought against them for the murder of A.M. and for concealing and disposing of her body. However, the prosecuting authorities decided not to prosecute due to concerns over insufficiency of evidence and, in the following three years, conducted periodic reviews of that decision. New evidence then came to light which led the Crown Office to conclude that there had been a change in the prospects of securing both applicants' conviction and the applicants were thus indicted in September 2008. Between their indictment and trial, lasting 20 months, the applicants lodged a number of motions and appeals, arguing in particular that they could not receive a fair trial owing to the significant delay which had occurred in their case, all without success.

The applicants' murder trial, which took place between May and June 2010 with the Crown leading evidence from over 50 witnesses, ended in their conviction for murder and attempting to pervert the course of justice. Between June 2010 and June 2014 the applicants lodged appeals against their conviction and sentence as well as ancillary appeals, including a complaint under Article 6 (right to fair trial within a reasonable time) of the European Convention on Human Rights about undue delay in the proceedings. The applicants' appeals against conviction and sentence were finally dismissed in March 2014 (Mr O'Neill) and June 2014 (Mr Lauchlan).

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicants contended that the overall length of the criminal proceedings against them had been excessive.

Violation of Article 6 § 1 (length of proceedings) - by reason of the overall duration of the relevant criminal proceedings

Just satisfaction: The Court held that the finding of a violation constituted adequate just satisfaction in respect in any possible non-pecuniary prejudice sustained by the applicants. It further awarded EUR 4,500 to Mr O'Neill for costs and expenses

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.