

Press release issued by the Registrar

Chamber judgments concerning Finland, France, Portugal and Turkey

The European Court of Human Rights has today notified in writing the following 11 Chamber judgments, none of which are final.¹

T.K. and S.E. v. Finland (application no 38581/97)

Violation of Article 6 § 1

The applicants, T.K. and S.E., are Finnish nationals, born in 1963 and 1951 respectively. They were shareholders in two limited liability companies, which were in the process of being wound up in 1991.

The applicants were charged with offences as dishonest debtors, but the charges were subsequently dropped. They complained that the criminal proceedings against them – which lasted for about five years and eight months in respect of T.K. and eight years and eight months in respect of S.E. – were excessively lengthy, in violation of Article 6 § 1 (right to a fair trial within a reasonable time) of the European Convention on Human Rights.

The European Court of Human Rights held unanimously that there had been a violation of Article 6 § 1 of the Convention and awarded T.K. 3,000 euros (EUR) and S.E. EUR 5,000 for non-pecuniary damage, and T.K. EUR 400 and S.E. EUR 7,123.14 for costs and expenses. (The judgment is available only in English.)

Dumont-Maliverg v. France (nos. 57547/00 and 68591/01)

Violation of Article 5 § 3

The applicant, Eric Dumont-Maliverg, is a French national who was born in 1944. He is currently in Bapaume Prison (France).

On 8 August 1997 he was placed under formal investigation for the rape and sexual assault of 15 year-old minors by a person in authority and remanded in custody.

He made several applications for bail which were refused by the courts on the grounds that it would undermine public order, there was a risk of his reoffending or putting pressure on the children, and there were no guarantees that he would appear for trial. On 20 September 2001 the Paris Assize Court convicted the applicant and sentenced him to sixteen years' imprisonment with a minimum of eight years to be served.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The applicant complained under Article 5 § 3 of the Convention (right to liberty and security) of the length of time he had spent in pre-trial detention.

The Court noted that there had been evidence against the applicant and the judicial investigating authorities had consistently relied on the same grounds when remanding him in custody or refusing his applications for bail. One of these had been the risk of serious prejudice to public order. In the Court's view, the authorities had at no stage sufficiently established the existence of such a risk as a valid ground for refusing the applicant bail. As to the alleged risk of the applicant's reoffending or putting pressure on the victims, the Court considered that in the context in which the offences had been committed, credible alternatives to the applicant's detention had been available under the Code of Criminal Procedure. Lastly, the Court noted that the risk of the applicant's absconding had been referred to in very general terms and had not been substantiated.

In those circumstances, it held unanimously that there had been a violation of Article 5 § 3 of the Convention. It considered that the finding of the violation in itself constituted sufficient just satisfaction for the non-pecuniary damage alleged by the applicant. (The judgment is available only in French.)

Vetter v. France (no. 59842/00)

Violation of Article 8
Violation of Article 6 § 1

The applicant, Christophe Vetter, is a French national who was born in 1975. He is currently serving a prison sentence.

Following the discovery of a body with gunshot wounds, the police installed listening devices in a flat which the applicant, whom they suspected of the homicide, visited regularly. On the strength of the conversations that were recorded, the applicant was placed under formal investigation for intentional homicide and remanded in custody until 30 December 1997.

The applicant argued that there was no statutory basis for the use of listening devices and that the evidence that had thereby been obtained was inadmissible. The Indictment Division of the Montpellier Court of Appeal and subsequently the Criminal Division of the Court of Cassation rejected that argument, holding that the monitoring of his conversations had not contravened Articles 81 and 100 et seq. of the Code of Criminal Procedure on the confidentiality of telephone communications.

Partly on the basis of the evidence obtained from the recordings, the applicant was committed for trial in the Hérault Assize Court. On 23 October 2000 he was convicted and sentenced to twenty years' imprisonment.

The applicant complained under Article 8 of the Convention (right to respect for private life) that there was no statutory basis in French law for the installation of the listening devices in the flat or the recording of his conversations and that his right to respect for his private life had accordingly been violated. He also complained under Article 6 § 1 (right to a fair hearing) that the procedure followed in the Court of Cassation was unfair in that neither the report of the reporting judgment nor the submissions of the advocate general had been communicated to him and that his complaint under Article 8 of the Convention had been dismissed on the ground that he had no standing.

The Court noted that the matters complained of by the applicant amounted to interference with his right to respect for his private life. However, it was not satisfied that Articles 100 et seq. of the Code of Criminal Procedure had afforded any statutory basis for the order to install the listening devices at the time it was made and implemented, as those provisions only regulated the interception of telephone communications and did not refer to listening devices. Even assuming that the provisions of the Code Criminal Procedure had constituted a basis for the measure, the Court considered that the “law” so identified did not have the requisite quality required by the Court’s case-law.

In conclusion, the Court noted that French law did not set out the extent of the authorities’ discretion with regard to listening devices or the procedure by which it was to be exercised with sufficiently clarity. In those circumstances, it held unanimously that there had been a violation of Article 8 of the Convention.

The Court held that no separate question arose under Article 6 of the Convention in respect of the decision by the Criminal Division of the Court of Cassation to dismiss the applicant’s appeal under Article 8 on the grounds that he had no standing.

Lastly, referring to its settled case-law, the Court held unanimously that there had been a violation of Article 6 § 1 in the proceedings in the Court of Cassation as the reporting judge’s report had not been communicate to the applicant or his counsel before the hearing, whereas the advocate general had received a copy.

Under Article 41 (just satisfaction) the Court awarded the applicant EUR 1,500 for non-pecuniary damage. (The judgment is available only in French.)

Violation of Article 6 § 1

Antunes Rocha v. Portugal (no. 64330/01)

Violation of Article 8

The applicant, Gracinda Maria Antunes Rocha, is a Portuguese national who was born in 1954 and lives in Pontinha (Portugal).

In May 1994 she signed a temporary contract of employment to work as an administrative assistant for the National Council for Emergency Civil Planning (*CNPCE*), a body accountable to the Prime Minister. The same day she received two documents on the headed notepaper of NATO and the National Security Authority which she filled in. The first required her to give information about herself and close relatives, while the second was an undertaking to comply with NATO security regulations.

The applicant resigned in September 1994 after discovering that she and her family had been the subject of an investigation that entailed her home being placed under surveillance and close acquaintances questioned. According to information from the Defence Ministry, all staff employed by the *CNPCE*, which worked with NATO, were liable to vetting in order to receive security clearance.

The applicant lodged a complaint alleging a breach of privacy and an investigation was started against a person or persons unknown. In June 1999 the public prosecutor discontinued the proceedings on the grounds that the offence was covered by an amnesty. However, on 21 January 2000 the investigating judge granted the applicant permission to intervene in the proceedings as an assistant to the prosecuting authority (*assistente*) and reopened the investigation.

The applicant sought damages for the losses she had sustained as a result of the invasion of her privacy. Her claim was declared inadmissible by the Lisbon Criminal Court on 26 October 2000, *inter alia* on the grounds that the alleged offence was covered by an amnesty.

The applicant complained under Article 6 § 1 (right to a fair hearing within a reasonable time) of the length of the criminal proceedings in which she had participated as an *assistente*. She also complained that, without her knowledge or consent, inquiries had been made to obtain information about her and her family, in breach of Article 8 (right to respect for private and family life).

As regards the length of the proceedings, the Court found that they had lasted one year and eight months, as they had begun when the applicant applied to intervene as an *assistente* and ended with the Criminal Court's decision. Having regard to the circumstances of the case, it considered that that period was unreasonable and did not comply with the "reasonable-time" requirement. Accordingly, the Court held unanimously that there had been a violation of Article 6 § 1 of the Convention.

The Court found that the authorities' decision to gather information about the applicant constituted interference with her private life. On examining whether that interference was "in accordance with the law", as required by Article 8 § 2 of the Convention, the Court noted, firstly, that there was a legal basis for it in domestic law, namely Cabinet Resolution no. 50/88 of 8 September 1988, which was in fact still in force. The Court considered the aim of the legislation sufficiently clear, namely to establish whether the person concerned was totally honest and loyal and whether his or her reputation, habits, social life, discretion and commonsense were such as to permit him or her to be given access to confidential files. However, the same could not be said of the manner in which the inquiries had been conducted. The legislation was too vague and did not alert those concerned to the fact that they might be subject to certain measures, such as surveillance of their home or tests of knowledge. Furthermore, the legislation did not contain any control mechanisms or provide any safeguards for individuals. That too was unacceptable in the Court's view.

Consequently, the Court found that Portuguese law did not indicate with sufficient clarity the scope of security investigations or the manner in which they were to be carried out. The gathering of the information about the applicant was not, therefore, "in accordance with the law". The Court accordingly held by seven votes to one that there had been a violation of Article 8 of the Convention.

Under Article 41 (just satisfaction) the Court awarded the applicant EUR 7,500 for pecuniary damage. (The judgment is available only in French.)

Violation of Article 5 § 3

Acunbay v. Turkey (nos. 61442/00 and 61445/00)

Dinler v. Turkey (no. 61443/00)

The applicants, Fatma and Muzaffer Acunbay, and Hasan Dinler are Turkish nationals who were born in 1968, 1969 and 1971. When their applications were lodged, Fatma and Muzaffer Acunbay were in Ümranye Prison and Hasan Dinler in Kocaeli Prison (Turkey).

Acunbay v. Turkey

Mr Acunbay was arrested and taken into custody on 5 November 1992 on suspicion of the armed robbery of a car. Mrs Acunbay was arrested with false identity papers on 8 September 1993 and prosecuted for being a member of an illegal organisation, the TKP-ML/TIKKO. On 12 June 2000 Mr and Mrs Acunbay were found guilty of being members of that organisation and of pursuing through it activities intended to overthrow the constitutional order of the Republic of Turkey by force. They were sentenced to death. The Court of Cassation quashed their convictions and remitted their cases to the state security court, where they are still pending.

Mr Acunbay was released on 16 July 2001 and Mrs Acunbay on 20 July 2001 as they were too health to remain in custody. Both are suffering from Wernicke-Korsakoff Syndrome after embarking on a hunger strike.

Dinler v. Turkey

Mr Dinler, who was in possession of false identity papers, was stopped and questioned on 9 March 1995. Criminal proceedings were brought against him on a charge of membership of an illegal armed organisation, namely the Party for the Liberation of the People of Turkey/Revolutionary Left Front (*THKP/C-Devrimci Sol*). The case is still pending before the Turkish courts, but the applicant was granted bail on 9 February 2005.

In both these cases, the applicants complained of the excessive length of their pre-trial detention, which, in their opinion, was in violation of the provisions of Article 5 § 3 (right to liberty and security) of the Convention.

The Court noted that Mr and Mrs Acunbay had been kept in pre-trial detention for about seven years and seven months and for six years and nine months respectively, and that Mr Dinler's pre-trial detention had lasted nine years and 11 months.

It seemed that in both these cases the orders confirming the applicants' detention had been made by the Turkish courts using an identical, not to say stereotyped, form of words, particularly phrases such as "the nature of the crimes [of which they are] accused" and "the state of the evidence", which concerned all of the accused, or the risk of absconding.

The Court acknowledged the seriousness of the offences with which the applicants were charged and of the sentence faced: the death penalty. Nonetheless, it reiterated that the risk of absconding could not be gauged solely on the basis of the severity of the sentence faced. Furthermore, although the "state of the evidence" could be understood to mean the existence and persistence of serious indications of guilt and although in general these might be relevant factors, they could not on their own justify the continuation for such long periods of the detention complained of.

Consequently, the Court found, unanimously in both cases, that there had been a violation of Article 5 § 3 of the Convention. It awarded EUR 5,500 to Mrs Acunbay, EUR 6,000 EUR to Mr Acunbay and EUR 6,179 to Mr Dinler in respect of non-pecuniary damage. In addition, in each of these cases, the Court awarded the applicants EUR 2,000 for costs and expenses, less EUR 701 already received by the applicants in legal aid in the *Acunbay v. Turkey* case. (The judgments are available only in French.)

Aslangiray and Others v. Turkey (no. 48262/99) ***Violation of Article 1 of Protocol No. 1***
The applicants, Ali Aslangiray, Fatma Özbilge and Gülsüm Özbilge, are Turkish nationals. On 19 July 1993 they each brought proceedings for compensation, alleging that their plots of land had been illegally seized for dam construction without any payment being made.

On 9 October 1997 Ali Aslangiray, Fatma Özbilge and Gülsüm Özbilge were awarded 303,510,000 Turkish liras (TRL) (approximately EUR 1,540), TRL 216,503,800 (approximately EUR 1,100) and TRL 424,914,000 (approximately EUR 2,155) respectively, plus interest at the statutory rate, running from 19 August 1993, when ownership of their land was transferred to the National Water Board. The applicants were paid on 11 November 1998.

The applicants complained that the compensation they obtained, after almost eight months of court proceedings, had fallen in value, since the default interest payable had not kept pace with the very high rate of inflation in Turkey. They also complained that the length of the proceedings was unreasonable and about the difference between the rates of interest payable on debts owed to and by the State and that State debts were not subject to enforcement proceedings like ordinary debts. They relied on Article 1 of Protocol No. 1 (protection of property), Article 6 § 1 (right to a hearing within a reasonable time) and Article 14 (prohibition of discrimination).

The European Court of Human Rights found that the delay in paying for the additional compensation awarded by the domestic courts was attributable to the expropriating authority and caused the owners to sustain loss additional to that of the expropriated land. As a result of that delay and the length of the proceedings as a whole, the Court found that the applicants have had to bear an individual and excessive burden. The Court held, unanimously, that there had been a violation of Article 1 of Protocol No. 1 and that it was unnecessary to examine the complaints under Article 6 § 1 or Article 14. The Court also held, unanimously, that the finding of a violation constituted sufficient just satisfaction for non-pecuniary damage and awarded Ali Aslangiray, Fatma Özbilge and Gülsüm Özbilge EUR 340, EUR 235 and EUR 480 respectively for pecuniary damage. (The judgment is available only in English.)

Emek Partisi and Şenol v. Turkey (no. 39434/98) ***Violation of Article 11***
The applicants are Osman Nuri Şenol, a Turkish national who was born in 1947 and lives in Koaeli (Turkey), and the political party *Emek Partisi* (Labour Party, EP), of which Mr Şenol was president at the relevant time.

The EP was founded on 25 March 1996. The public prosecutor brought an action seeking to have the party dissolved. On 14 February 1997 the Constitutional Court ordered that the EP be dissolved, on the ground that its constitution and programme were likely to undermine the territorial integrity of the State and the unity of the nation. The Constitutional Court found that, on the pretext of promoting the development of the Kurdish language, the EP's constitution aimed to create minorities, to the detriment of the territorial integrity and national unity of the Turkish State, thus promoting separatism and the division of the Turkish nation.

The applicants alleged that the EP's dissolution had constituted a violation of Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression), 11 (freedom of assembly and association) and 14 (prohibition of discrimination) of the Convention.

The Court noted that the EP's dissolution amounted to interference with the applicant's right to freedom of association. The interference had been prescribed by law and pursued a legitimate aim, namely the protection of territorial integrity.

The party had been dissolved solely on the basis of its programme, before it had even been able to commence its activities. The Court noted that the relevant sections of the programme contained an analysis of the development of the working class in Turkey and throughout the world, and a critical analysis of the way in which the Government was fighting separatist activities. It accepted that the principles defended by the EP were not in themselves contrary to the fundamental principles of democracy.

As the EP did not advocate any policy that could have undermined the democratic regime in Turkey and did not urge or seek to justify the use of force for political ends, its dissolution could not reasonably be said to have met a "pressing social need" and thus be "necessary in a democratic society".

Accordingly, the Court held unanimously that there had been a violation of Article 11 of the Convention. As the complaints of a violation of Articles 9, 10 and 14 of the Convention concerned the same facts as those examined under Article 11, the Court considered that it was not necessary to examine them separately.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants jointly EUR 15,000 for non-pecuniary damage and EUR 3,000 for costs and expenses. (The judgment is available only in French.)

Violation of Article 3
Violation of Article 6 § 1
Violation of Article 13

Gültekin and Others v. Turkey (no. 52941/99)

The four applicants, Erol Gültekin, Sait Oral Uyan, Kazım Gündoğan and Nezahat Turhan, are Turkish nationals who were born in 1959, 1965, 1963 and 1968 respectively. Mr Gültekin lives in Istanbul, and the other applicants are currently imprisoned in Bursa and Istanbul.

On 19 and 20 April 1996 the applicants were arrested and placed in police custody on suspicion of belonging to the illegal organisation TKP/ML - TIKKO (Communist Party of Turkey/Marxist-Leninist – Turkish Peasants' and Workers' Liberation Army).

At the end of their period in police custody, namely on 3 May 1996, the applicants were questioned by the public prosecutor at the Istanbul State Security Court, to whom they alleged that they had been tortured. On the same day, they were examined by a forensic doctor, who found various injuries on their bodies: in particular, Mr Gültekin had numbness and pain in his arms, a very painful neck, urinary problems and pain in the testicles; Mr Uyan had a lesion below the right knee, pain in the arms and urinary problems; Mr Gündoğan had scratches at the elbows and, among other injuries, numbness and pain in the right arm and thorax; and Ms Turhan, among other injuries, had several bruises on the arm, elbow and leg, together with numbness and pain in the arms and urinary problems.

On 7 July 1998 the Istanbul State Security Court found Mr Gültekin guilty and sentenced him to four years, four months and 15 days' imprisonment for aiding and abetting an illegal organisation; it sentenced Ms Turhan and Mr Gündoğan to 12 years and six months'

imprisonment for belonging to such an organisation and for endangering the constitutional order. It further sentenced Mr Uyan to death, commuted to life imprisonment.

In May 1997 the public prosecutor instituted proceedings for ill-treatment against the three police officers responsible for the applicants' police detention. At the end of those proceedings the police officers in question were acquitted. However, two of them were convicted of having hit a co-prisoner of the applicants. He had given evidence that the persons detained in the same premises had also been tortured.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) of the Convention, the applicants complained of the treatment inflicted on them during their period in police custody. In addition, they complained under Article 6 § 1 (right to a fair trial) that the proceedings which had resulted in their conviction had been unfair on account of the presence of a military judge on the bench of the State Security Court. Finally, relying on Article 13 (right to an effective remedy), they complained that they had not had an effective remedy in respect of their allegations of ill-treatment while they were in police custody.

The Court reiterated that a State was responsible for any person in custody, since he or she was entirely in the hands of the police and was in a vulnerable position, and the authorities had a duty to protect such persons. In the case in issue, the criminal proceedings brought against the police officers had provided no explanation of how the injuries found on the applicants' bodies had been caused. The applicants had been held in custody for about 14 days and denied access to a lawyer. Having regard to the materials placed before it and in the absence of a plausible explanation from the Turkish Government, the Court considered that Turkey was responsible for the injuries found on the applicants' bodies. Accordingly, it expressed the unanimous opinion that the applicants had been subjected to inhuman and degrading treatment, in violation of Article 3 of the Convention.

Furthermore, as it has previously had occasion to do in numerous cases, the Court held unanimously that there had been a violation of Article 6 § 1 as regards the complaint that the State Security Court had not been independent and impartial on account of the presence of a military judge on its bench.

Finally, the Court noted that the criminal proceedings against the police officers had made it possible to establish that two of them were guilty of violence against a co-prisoner of the applicants. However, it had provided no explanation of how the injuries found on the applicants' bodies had been caused and had not made it possible to identify and prosecute those responsible. The authorities seemed to have attached no importance to the applicants' statements, in that they made no attempt to obtain statements from the other police officers against whom the applicants had lodged complaints. In those circumstances, the Court concluded unanimously that there had been a violation of Article 13 of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded EUR 10,000 each to Mr Gültekin and Uyan and EUR 15,000 EUR each to Mr Gündoğan and Ms Turhan for non-pecuniary damage. The Court also awarded the applicants EUR 3,000 jointly for costs and expenses. (The judgment is available only in French.)

I.R.S. and Others v. Turkey (no. 26338/95)

Just satisfaction

The applicants were five Turkish residents who lived in Ankara. They were registered as co-owners of a plot of land in Ergazi which was occupied for many years by a military airport.

By a judgment of 25 May 1993, the Ankara Court of First Instance cancelled the applicants' property title and transferred ownership of the land to the authorities, on the ground that the latter had occupied it in the public interest for more than 20 years without interruption. The Court of Cassation upheld that judgment in 1994.

In a Chamber judgment of 20 July 2004, the European Court of Human Rights had found a violation of Article 1 of Protocol No. 1 (protection of property) on account of the cancellation of the applicants' property title pursuant to a law that was applied retrospectively and which contained no provision for a compensation procedure. It had held at the time that the question of the application of Article 41 (just satisfaction) was not ready for decision.

In the judgment which it notified today, the Court made the following awards in respect of non-pecuniary damage: EUR 15,022 to I.R.S., EUR 120,162 to N.T.A., EUR 35,042 to H.N.E. and EUR 85,120 to H.H.E. In addition, the Court awarded them EUR 5,000 jointly for costs and expenses.

Kayatepe v. Turkey (no. 57375/00)

Violation of Article 1 of Protocol No. 1

The applicant, Mehmet Tevfik Kayatepe, is a Turkish national who was born in 1923 and lives in Antalya (Turkey). He complained of delays in the payment of compensation owed following the expropriation of a plot of land belonging to him in Muratpaşa. In addition, he alleged that the amount awarded took no account of the effective inflation rate between the date on which the sum was decided and the date of payment.

The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention. It held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant and awarded him EUR 623,500 for pecuniary damage and EUR 500 for costs and expenses. (The judgment is available only in French.)

These summaries by the Registry do not bind the Court. The full texts of the Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in

exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.