EUROPEAN COURT OF HUMAN RIGHTS

53
31.1.2006

Press release issued by the Registrar

Chamber judgments concerning
France, the Netherlands, Poland, Romania, Ukraine and Slovakia

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

Repetitive cases[2] and length-of-proceedings cases, with the Court's main finding indicated, can also be found at the end of the press release.

Dukmedjian v. France (application no. 60495/00) ***Violation of Article 6 § 1 (length)***
The applicant, Gérard Dukmedjian, is a French national who was born in 1943 and lives in Mont D'Or (France).

A private company called Delior SARL, of which he is the manager, underwent a tax reassessment which was annulled in 1992 on account of a procedural defect. A further tax audit was carried out on the applicant's professional earnings for the years 1979 and 1980. He lodged a number of preliminary claims with the authorities from March 1984 onwards. When the proceedings ended, with a decision of the *Conseil d'Etat* being served on him on 7 January 2000, the applicant was required to pay supplementary income tax together with penalties for having acted in bad faith.

The applicant submitted that the maintaining of the tax reassessment and the penalties imposed on him had infringed his right to the peaceful enjoyment of his possessions, in breach of Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights. He also complained under Article 6 § 1 (right to a fair hearing within a reasonable time) of the length of the proceedings and of procedural unfairness.

The European Court of Human Rights declared the complaint relating to the length of the proceedings admissible and the remainder of the application inadmissible. It noted that the proceedings had lasted for 15 years and nine months at four levels of jurisdiction. In the circumstances of the case, it considered that such a period was excessive and did not meet the "reasonable time" requirement. The Court accordingly held, unanimously, that there had been a violation of Article 6 § 1 and awarded the applicant 12,000 euros (EUR) in respect of non-

[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.

[2] In which the Court has reached the same findings as in similar cases raising the same issues under the European Convention on Human Rights.

pecuniary damage, together with EUR 1,000 for costs and expenses. (The judgment is available only in French.)

Violation of Article 8

Rodrigues da Silva and Hoogkamer v. the Netherlands (no. 50435/99)
The applicants, Solange Rodrigues da Silva, a Brazilian national, and her daughter, Rachael Hoogkamer, a Netherlands national, were born in 1972 and 1996 respectively. Ms Rodrigues da Silva lives in Amsterdam and Ms Hoogkamer lives in both Amsterdam and Uithoorn (the Netherlands).

Ms Rodrigues da Silva arrived in the Netherlands in June 1994 and took up residence with her partner, Mr Hoogkamer. Their daughter, Rachael was born in February 1996 and was recognised by Mr Hoogkamer, as a result of which she obtained Dutch nationality.

Ms Rodrigues da Silva and Mr Hoogkamer split up in 1997 and Rachael stayed with her father, who, after a series of court proceedings, was awarded parental authority. The courts based their decision on an expert report which stated that it would be a traumatic experience for the child to be uprooted from the Netherlands and separated from her father and paternal grandparents.

In the meantime Ms Rodrigues da Silva unsuccessfully applied for a residence permit. In justifying the refusal, the Deputy Minister of Justice noted, in particular, that the applicant, who was working illegally, did not pay taxes or social security contributions and held that the interests of the economic well-being of the country outweighed Ms Rodrigues da Silva's right to reside in the Netherlands. Ms Rodrigues da Silva appealed to the Regional Court of The Hague, which upheld the previous decision.

Despite being ordered to leave, Ms Rodrigues da Silva continues to reside and work in the Netherlands. Rachael stays with her at the weekend and during the week with her paternal grandparents, who are happy with the arrangement.

The applicants maintained that the refusal to grant Ms Rodrigues da Silva a residence permit could, among other things, lead to Rachael being separated from her mother. They relied on Article 8 (right to respect for private and family life).

The Court noted in particular that Rachael had been raised jointly by Ms Rodrigues da Silva and her paternal grandparents and had very close ties with them. Ms Rodrigues da Silva's expulsion would make it impossible for her to maintain regular contact, which was a serious problem, given that Rachael, who was only three years old at the time of the final expulsion decision, needed to remain in contact with her mother.

The Court found that Ms Rodrigues da Silva's expulsion would have far-reaching consequences on her family life with her young daughter and that it was clearly in Rachael's best interests for her mother to stay in the Netherlands. The Court therefore considered that the economic well-being of the country did not outweigh the applicants' rights under Article 8, despite the fact that the first applicant was residing illegally in the Netherlands when Rachael was born. Moreover, it found also that the authorities, by attaching such importance to this latter element, might be considered to have indulged in excessive formalism.

The Court held unanimously that there had been a violation of Article 8, and that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. (The judgment is available only in English.)

Sezen v. the Netherlands (no. 50252/99) ***Violation of Article 8***
The applicants, Mevlut Sezen and Emine Sezen-Oğus, are Turkish nationals who were born in 1966 and 1972, respectively, and live in Amsterdam.

Mr Sezen moved to the Netherlands in 1989 while Mrs Sezen-Oğus has lived there since she was seven years old and holds a permanent residence permit. The applicants married in October 1990 and have two children. In 1991 Mr Sezen was granted a residence permit and, in 1992, acquired the right to remain in the Netherlands indefinitely.

In January 1993 Mr Sezen was sentenced to four years' imprisonment for organised crime activities and for being in possession of 52 kilos of heroin. He was released in April 1995 when he went back to live with his wife and child and found a job.

The applicants lived separately for a while and it was noted in the municipal register that Mr Sezen was absent from the marital home from 28 November 1995 to 25 June 1996.

In May 1996, on the advice of an official at the Aliens' Police Department, Mr Sezen made an application to have his residence permit extended or amended so that he could reside and work in the Netherlands without being required to live with his wife. The Deputy Minister of Justice, taking into account his previous conviction, rejected his application and imposed a 10 year exclusion order on him. He was informed that he had lost his indefinite right to remain on 28 November 1995 when he ceased living with his wife.

The Deputy Minister, in dismissing Mr Sezen's objection, held that, regardless of the fact that Mr Sezen had moved back to the matrimonial home, given the duration of the separation, the breakdown of the applicants' marriage had been of a permanent nature.

Mr Sezen appealed to the Regional Court of The Hague arguing among other things, that there had not been any breakdown of his marriage and that during their period of living apart their second child had been conceived. The court upheld the Deputy Minister's decision in so far as the denial of continued residence was concerned but quashed the exclusion order.

The applicants complained about the refusal to allow Mr Sezen to live indefinitely in the Netherlands, relying on Article 8 (right to respect for private and family life).

The Court was particularly struck by the fact that the authorities considered that the couple's marriage had permanently broken down despite being informed that the applicants were living together again. It also observed that at the time of his conviction, Mr Sezen held strong residence status and, under Dutch law, his residence permit could not have been revoked, nor could an exclusion order have been served on him. Yet by ruling that the marriage had permanently broken down, the authorities were able to refuse him continued residence on the basis of the criminal conviction. This was despite the fact that four years had lapsed since his conviction, Mr Sezen had served his sentence and, as illustrated by the fact that he had obtained gainful employment and had had a second child, had begun rebuilding his life.

The Court recalled that domestic measures which have the effect of splitting up a family were an interference of a very serious order. Having found that the applicant's wife and children could not be expected to follow Mr Sezen to Turkey, the Court noted that the family could

not be united as long as Mr Sezen continued to be denied the right to reside in the Netherlands.

The Court concluded that the Dutch authorities had failed to strike a fair balance between the applicants' interests on the one hand and its own interest in preventing disorder or crime on the other and held by five votes to two that there had been a violation of Article 8. The applicants have not submitted any claims for just satisfaction. (The judgment is available only in English.)

Kranc v. Poland (no. 12888/02) ***Violation of Article 6 § 1 (length)***
The applicant, Danuta Kranc, is a Polish national who was born in 1929 and lives in Ciechanów (Poland).

On 21 April 1993 Rzesów District Court gave judgment against Ms Kranc in a case concerning the division of property. The applicant took out appeal proceedings but the judgment was finally upheld by the Rzesów Regional Court on 26 June 2001.

The applicant complained about the length of the proceedings and that her right to the peaceful enjoyment of her possessions had been infringed. She relied on Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 1 of Protocol No. 1 (protection of property).

The Court found that the length of proceedings amounting to eight years and two months for three levels of jurisdiction was excessive and failed to meet the "reasonable time" requirement. It accordingly held unanimously that there had been a violation of Article 6 § 1.

In view of that finding the Court considered that it was not necessary to examine the complaint under Article 1 of Protocol No. 1 and awarded Ms Kranc EUR 2,800 in respect of non-pecuniary damage. (The judgment is available only in English.)

Stângu and Scutelnicu v. Romania (no. 53899/00) ***No violation of Article 10***
The applicants, Lucian Dragoş Stângu and Ovidiu Scutelnicu, are Romanian nationals who were born in 1968 and 1967, respectively. Mr Stângu lives in Philadelphia (United States) and Mr Scutelnicu in Bucharest. They are both journalists.

In May 1997 the applicants published an article in an Iaşi newspaper, *Monitorul*, that was entitled "Colonel P.S. to quit police. Has he amassed a fortune?" The article stated that P.S., former chief of the anti-corruption and anti-smuggling branch, had most probably dealt with numerous cases with the complicity of his wife, who was a judge, and that he was now intending to invest a considerable sum in a private bank.

P.S. and his wife considered the article defamatory and lodged a criminal complaint against the applicants. The applicants were convicted of defamation and were given a one-year suspended prison sentence by the Romanian courts. An application by the Procurator-General for the decision to be set aside was upheld by the Supreme Court of Justice on 5 May 2000. The Supreme Court acquitted the applicants of defamation and ordered them to pay 30 million Romanian lei (equivalent to EUR 1,662) in damages to the police officer and his wife.

The applicants argued that the finding against them had infringed their right to freedom of expression under Article 10 of the Convention.

The question before the Court was to determine whether the interference with the applicants' right to freedom of expression had been justified and "necessary in a democratic society". It reiterated that the limits of acceptable criticism were broader in the case of civil servants acting in their official capacity, as in the case of politicians, but that it might be necessary to protect them against offensive attacks in connection with their duties.

While the applicants had indeed had a duty, in accordance with the role of the press in a democratic society, to alert the public about presumed misappropriation on the part of the public authorities, the fact of directly accusing Mr and Mrs S. had placed them under an obligation to provide a sufficient factual basis for their assertions. They had failed to do so throughout the proceedings in the Romanian courts and had not sought to substantiate their allegations. The Court moreover considered that the applicants should have exercised the utmost care and particular moderation in using statements attributed to third parties.

Accordingly, in view of the bad faith and lack of factual basis, and even though the impugned article had been published in the context of a broader and highly topical debate within Romanian society, on the subject of corruption in the civil service, the Court did not believe that the applicants' assertions could be taken as an example of the "degree of exaggeration" or "provocation" which was permissible in the exercise of journalistic freedom. It also noted that the amount the applicants had been ordered to pay Mr and Mrs S. was moderate.

In those circumstances, the Court considered that the finding against the applicants in civil proceedings had not been disproportionate to the legitimate aim pursued and that the interference complained of could therefore be regarded as "necessary in a democratic society". Accordingly, it held by five votes to two that there had been no violation of Article 10 of the Convention. (The judgment is available only in French.)

Yurtayev v. Ukraine (no. 11336/02) ***Violation of Article 6 § 1 (length)***
The applicant, Yuriy Viktorovich Yurtayev, is a Ukrainian national who was born in 1961 and is currently serving a prison sentence in Makeyevka (Ukraine).

In February 1998 Mr Yurtayev was arrested on suspicion of hooliganism and extortion for which he was subsequently charged and detained on remand. He was retried on a number of occasions and finally sentenced to nine years' imprisonment for extortion. The judgment was upheld on appeal in June 2001. Between the retrials there were a large number of hearings and postponements.

The applicant complained about the length of the proceedings. He relied on Article 6 § 1 (right to a fair trial within a reasonable time).

The Court found that, particularly in view of the poor conditions in which Mr Yurtayev was kept, the authorities had not shown enough diligence and that the length of proceedings amounting to three years and three months for two levels of jurisdiction was excessive. It accordingly held unanimously that there had been a violation of Article 6 § 1.

Mr Yurtayev was awarded EUR 1,000 in respect of non-pecuniary damage. (The judgment is available only in English.)

Repetitive cases

In the following cases the Court has reached the same findings as in similar cases raising the same issues:

Violation of Article 6 § 1 (fairness)

Malinovskiy v. Ukraine (no. 6028/02)
Shiker v. Ukraine (no. 10614/02)
The applicants complained about the lengthy failure to enforce judgments delivered in their favour. They relied on Article 6 § 1 (access to a court) of the Convention.

The Court noted that the judgments in question were not enforced for years, a situation for which the Government had not provided any plausible justification. It therefore held, unanimously, that there had been a violation of Article 6 § 1 and awarded each applicant EUR 829 in respect of non-pecuniary damage. (The judgment is available only in English.)

Length-of-proceedings cases

In the following cases the applicants complained of the excessive length of civil proceedings. In the case of ***Malejčik v. Slovakia*** the applicant also complained under Article 13 (right to an effective remedy) that he had had no effective remedy in respect of his complaint. (The judgments are available only in English.)

Violation of Article 6 § 1 (length)

Bernát v. Slovakia (no. 1395/02)
The Court awarded the applicant EUR 2,700 for non-pecuniary damage.

Malejčik v. Slovakia (no. 62187/00) ***Violation of Article 6 § 1 (length)***
The Court held unanimously that it was not necessary to examine separately the complaint under Article 13 of the Convention and awarded the applicant EUR 2,000 for non-pecuniary damage.

***

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).

Registry of the European Court of Human Rights
F – 67075 Strasbourg Cedex
Press contacts: Roderick Liddell (telephone: +00 33 (0)3 88 41 24 92)
Emma Hellyer (telephone: +00 33 (0)3 90 21 42 15)
Stéphanie Klein (telephone: +00 33 (0)3 88 41 21 54)
Beverley Jacobs (telephone: +00 33 (0)3 90 21 54 21)
Fax: +00 33 (0)3 88 41 27 91

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.*