EUROPEAN COURT OF HUMAN RIGHTS

55
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Press release issued by the Registrar

Chamber judgments concerning Bulgaria, Italy, Russia and Turkey

The European Court of Human Rights has today notified in writing the following 20 Chamber judgments, of which only the friendly settlement judgment is final.[1]

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

Violation of Article 5 §§ 3 and 4
Vasilev v. Bulgaria (no. 59913/00) ***Violation of Article 6 § 1 (length)***
The applicant, Kiril Yonkov Vasilev, is a Bulgarian national who was born in 1974 and lives in Vakarel (Bulgaria).

On 20 January 1995 the applicant was charged with armed robbery, assault causing grievous bodily harm and manslaughter and was detained pending trial. He was convicted and sentenced to 16 years' imprisonment on 12 September 1996 with ten other accused persons. On 9 February 1999 his conviction and sentence were set aside on the ground that two of the accused persons had been represented at the preliminary investigation stage by the same lawyer despite an obvious conflict of interest.

The applicant lodged several applications for release but each time they were dismissed by the Bulgarian courts in view of the seriousness of the charge and the risk that he might abscond. In April 2001 Lovech Regional Court decided to release the applicant on bail and fixed the amount of the recognisance at 4,000 Bulgarian levs – approximately 2,041.54 euros (EUR). The applicant remained in pre-trial detention until 31 July 2001, the day he paid the recognisance. The proceedings against him were still pending in November 2005.

Relying on Article 5 §§ 3 and 4 (right to liberty and security) of the European Convention on Human Rights, the applicant complained that his pre-trial detention had been excessively lengthy and that the scope of judicial review of the lawfulness of his detention had been too narrow. He also complained under Article 6 § 1 (right to a fair trial within a reasonable time) that the criminal proceedings against him had been excessively lengthy.

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[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.

The European Court of Human Rights noted that the applicant had remained in detention for approximately four years and two months (20 January 1995 to 12 September 1996 and 9 February 1999 to 31 July 2001).

The Court considered that in view of the violent nature of the offences with which the applicant and the other members of the gang had been charged, the authorities could reasonably have considered that there was a danger of the applicant's absconding or committing offences if released. However, the authorities had to be criticised for having repeatedly applied, even after 1 January 2000 – the date on which Bulgarian law on pre-trial detention had been amended – legal provisions and practice according to which remand in custody was imposed and maintained automatically whenever the charges concerned a serious offence. Therefore, the Court considered that there had been a violation of the applicant's right under Article 5 § 3 to a trial within a reasonable time or release pending trial.

The Court also found that the Bulgarian courts had not examined all questions relevant to the lawfulness, within the meaning of Article 5 of the Convention, of the applicant's pre-trial detention. It accordingly held, unanimously, that there had been a violation of Article 5 § 4.

Finally, the Court noted that the criminal proceedings against the applicant, which were still pending, had lasted nearly 11 years. In view of the delays in the proceedings, the Court held, unanimously, that there had been a violation of Article 6 § 1.

It awarded the applicant EUR 4,000 in respect of non-pecuniary damage and EUR 5,500 for costs and expenses. (The judgment is available only in English.)

Chizzotti v. Italy (no. 15535/02) ***Violation of Article 13***

The applicant, Mario Chizzotti, is an Italian national who was born in 1951 and lives in Carbonara Scrivia (Italy).

He was an employee of the private company Filippo Fochi Energia S.r.l., which became insolvent and, in June 1995, was placed in "extraordinary administration". In January 1999 the company informed the applicant that he was entitled to receive the equivalent of EUR 23,670 in respect of wages, severance pay and statutory interest.

On 30 June 1999 the administrators filed a statement of the claims against the company with the registry of the Bologna District Court. In 2001 the debts amounted to a total of 570 million euros. In 2005 the Ministry of Production Activities authorised the company to submit an initial proposal for composition with its preferential creditors, and subsequently indicated that the remaining resources would not be sufficient for any further payments.

The applicant alleged under Article 13 (right to an effective remedy) that he had had no effective remedy to enable him to secure payment of money owed to him by his former employer.

The Court noted that the applicant had been entitled to receive money from his former employer but that he had been obliged to wait until 30 June 1999 for the filing of the statement of claims. Under Italian law, he had been unable until then to apply to the courts to secure the payment due to him or to challenge the statement of claims.

Under those circumstances, the Court held, unanimously, that there had been a violation of Article 13. It awarded the applicant EUR 5,000 in respect of non-pecuniary damage and EUR 2,500 for costs and expenses. (The judgment is available only in French.)

Violation of Article 13
No violation of Articles 3 and 8 and Article 1 of Protocol No. 1
No violation of Article 5 § 1
No violation of Article 18
No violation of Article 14

Ağtaş v. Turkey (no. 33240/96)
Artun and Others v. Turkey (no. 33239/96)
Keser and Others v. Turkey (nos. 33238/96 and 32965/96)
Kumru Yılmaz and Others v. Turkey (no. 36211/97)
Öztoprak and Others v. Turkey (no. 33247/96)
Şaylı v. Turkey (no. 33243/96)
The applicants are 56 Turkish nationals who, at the time of the events giving rise to the applications, were living in villages in the regions of Turkey which were then subject to a state of emergency or under military control.

The facts of the cases are in dispute between the parties.

According to the applicants, in 1994 terrorist activity was a major concern in the area where they lived. Since the 1980s a violent conflict had been going on in the region between the security forces and sections of the Kurdish population in favour of Kurdish autonomy, in particular members of the PKK (Workers' Party of Kurdistan). The inhabitants of the applicants' villages were suspected of "aiding and abetting terrorists", and accordingly they underwent strict and frequent controls by the gendarmes stationed near the villages.

In October 1994 the security forces surrounded the applicants' villages and assembled the residents in the village square. They swore and told them that the villages would be evacuated at once with no possibility of returning. The applicants took what they were able to carry with them and left the villages. Immediately after the evacuation, the soldiers set the houses and the crops on fire. The applicants filed a petition with the Ovacık public prosecutor's office, complaining about the burning down and forced evacuation of their villages by the gendarmes. They were informed by the district governor that no investigation into the alleged events would be initiated.

According to the Government's version of the facts, the applicants' villages had not been burned by the security forces but by terrorists wearing military uniforms. In their statements to the investigating authorities, the applicants failed to specify the identity of the perpetrators of the alleged crime.

The applicants complained that the State security forces had destroyed their homes and possessions and had forced them to leave their villages. They alleged violations of Article 3 (prohibition of inhuman or degrading treatment), Article 5 § 1 (right to liberty and security), Articles 6 (right to a fair hearing within a reasonable time), 8 (right to respect for private and family life), 13 (right to an effective remedy), 18 (limitation on use of restrictions on rights), and Article 14 (prohibition of discrimination) in conjunction with Articles 6, 8 and 13 and Article 1 of Protocol No. 1 (protection of property) to the Convention.

The Court decided unanimously to strike out of the list application no. 33238/96 as far as Zeliha Keser was concerned.

With regard to the circumstances of the case and to the applicants' failure to corroborate their allegations, the Court did not find it established to the required standard of proof that the applicants' houses had been burned or that they had been forcibly evicted from their villages by the State security forces. Against that background, the Court held unanimously in these six cases that there had been no violation of Articles 3 or 8 or of Article 1 of Protocol No. 1.

The applicants had never been arrested or detained or otherwise deprived of their liberty. Their insecure personal circumstances arising from the alleged loss of their homes and possessions did not fall within the notion of security of person as envisaged in Article 5 § 1. Accordingly, the Court held unanimously in all these cases that there had been no violation of Article 5 § 1.

The Court held unanimously that in all these cases it was not necessary to determine whether there had been a violation of Article 6 § 1 and decided to examine this complaint from the standpoint of Article 13. The Court noted that the administrative authorities had commenced an investigation into the applicants' allegations, but it had been limited to asking the Gendarmerie Headquarters to provide information about the applicants' allegations; no further investigations had been carried out by the authorities. The Court observed that it had previously expressed serious doubts as to the ability of the administrative councils in south-east Turkey to carry out an independent investigation, given that they were composed of civil servants, who were hierarchically dependent on the governor, and an executive officer who was linked to the security forces under investigation. In these circumstances, it could not be said that the authorities had carried out a thorough and effective investigation into the applicants' allegations of the destruction of property in their villages. Accordingly, the Court held unanimously in these cases that there had been a violation of Article 13, except in respect of the Gözeler applicants in the case of ***Keser and Others***, who had no "arguable complaint".

Concerning the allegation of discrimination because of the applicants' Kurdish origin and the interference with or restrictions of their rights, the Court considered it unsubstantiated in the light of the evidence submitted to it. It therefore held unanimously that there had been no violation of Articles 14 and 18.

The Court awarded the following amounts, in euros, in each case. (The judgments are available only in English.)

	Non-pecuniary damage	***Costs and expenses***
Ağtaş v. Turkey	***4,000***	***2,150***
Artun and Others v. Turkey	***4,000 (each)***	***2,570 (jointly)***
Keser and Others v. Turkey	***4,000 (each)***	***3,031.53 (jointly)***
Kumru Yılmaz and Others v. Turkey	***4,000 (each)***	***4,900 (jointly)***
Öztoprak and Others v. Turkey	***4,000 (each)***	***2,650 (jointly)***
Şaylı v. Turkey	***4,000***	***2,150***

(The judgments are available only in English.)

Biç and Others v. Turkey (no. 55955/00) ***Inadmissible***
The applicants are the widow and three children of İhsan Biç, who died on 9 October 1999. They live in Yukarıharım (Turkey).

In October 1993, İhsan Biç was arrested by the security forces on suspicion of having participated in an attack on a military convoy, organised by the PKK. He confessed to being a member of the PKK and to having participated in the attack. He was held on remand until September 1995, when he was sentenced to 12 years and six months' imprisonment by Diyarbakır State Security Court. The Court of Cassation quashed that decision and sent the case file back for re-examination. In October 1999 İhsan Biç died in hospital from cirrhosis of the liver while in detention on remand; the state security court decided to discontinue the criminal proceedings against him.

The applicants complained about the length of İhsan Biç's detention on remand and the length and unfairness of the proceedings brought against him. They relied on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) and Article 6 § 1 (right to a fair trial within a reasonable time).

The Court observed that İhsan Biç's relatives had lodged an application with it approximately three months after his death. It reiterated that the rights guaranteed under Article 5 belonged to the category of non-transferable rights and that relatives of a deceased person could not be considered victims in respect of complaints concerning the length of proceedings.

There was no evidence in the file to conclude that the applicants had been affected by İhsan Biç's detention or by the length of the criminal proceedings. The Court further considered that there was no general interest which necessitated proceeding with the consideration of those complaints.

The Court concluded unanimously that the applicants did not have the requisite standing under Article 34 (right of individual petition) and that the application should be rejected. (The judgment is available only in English.)

Violation of Article 5 §§ 3 and 4
Duran Sekin v. Turkey (no. 41968/98) ***Violation of Article 6 § 1 (fairness)***
The applicant, Duran Sekin, is a Turkish national who was born in 1967 and lives in Tokat (Turkey).

On 23 November 1997 he was arrested and taken into police custody on suspicion of being a member of an illegal armed organisation, the TKP/ML-TIKKO (Turkish Workers' and Peasants' Liberation Army). On 29 November 1997 he was brought before a judge, who ordered his detention pending trial.

On 9 June 1998 the Ankara State Security Court sentenced him to 15 years' imprisonment for membership of a terrorist organisation. Under Law no. 4959 on social rehabilitation, his sentence was reduced to five years on 17 August 2004, when he was released.

The applicant complained under Article 5 (right to liberty and security) of the length of time he had been held in police custody and of his inability to secure a review of the lawfulness of his detention. He further complained under Article 6 (right to a fair trial) of procedural unfairness in the proceedings leading to his conviction.

The Court noted that the applicant had been held in police custody for six days. It could not accept that it had been necessary to detain the applicant for such a long time before bringing him before a judge. The Court accordingly held, unanimously, that there had been a violation of Article 5 § 3.

As to the applicant's right to secure a review of the lawfulness of his detention, the Court noted that the period he had spent in police custody was consistent with Turkish law as applicable at the material time. In those circumstances, it considered that an application for release to the Turkish courts would not have been likely to succeed. The Court accordingly held, unanimously, that there had also been a violation of Article 5 § 4.

The Court further held, unanimously, that there had been a violation of Article 6 § 1 as regards the complaint that the state security court had lacked independence and impartiality. Reiterating that a court whose lack of independence and impartiality had been established could not in any circumstances guarantee a fair trial to those subject to its jurisdiction, the Court considered that it was not necessary to examine the other complaints concerning the unfairness of the proceedings.

By way of just satisfaction, the Court awarded the applicant EUR 1,000 in respect of non-pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in French.)

Sincar and Others v. Turkey (no. 46281/99) ***Friendly settlement***
The applicants are three Turkish nationals who were taken into police custody by police officers at the Batman Security Directorate following an order to inspect the Diyarbakır and Batman offices of HADEP, where demonstrations and hunger strikes were allegedly being organised to protest against the arrest of the PKK leader, Abdullah Öcalan.

The applicants complained under Article 5 § 3 (right to be brought promptly before a judge) that the length of their detention in police custody had been excessive. They also complained under Article 13 (right to an effective remedy) about the lack of an effective domestic remedy in respect of the length of their detention in police custody.

The case has been struck out following a friendly settlement in which EUR 9,600 is to be paid to the applicants. (The judgment is available only in English.)

Taciroğlu v. Turkey (no. 25324/02) ***Violation of Article 5 § 3***
The applicant, Yeşim Taciroğlu, is a Turkish national who was born in 1972. She is detained in Gebze Prison (Turkey).

On 17 September 1993 the applicant was arrested on suspicion of being a member of Dev-Sol (Revolutionary Left), and was taken into custody. In December 2003 she was sentenced to life imprisonment. In April 2005 the Court of Cassation quashed her conviction and remitted the case back to Istanbul State Security Court, where it is still pending.

The applicant complained that her detention on remand had exceeded the "reasonable-time" requirement provided for in Article 5 § 3 (right to liberty and security).

The Court noted that the applicant had been kept in pre-trial detention for 10 years and three months. The state security court had prolonged the applicant's detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence, the state of the evidence, the contents of the case file and the duration of the detention". On two occasions it had also mentioned that the case was due to be decided upon.

In the Court's view, while "the state of the evidence" could be understood to mean the existence and persistence of serious indications of guilt and such circumstances could in general be relevant factors, they could not on their own justify extending the applicant's detention over such a long period. The Court therefore held, unanimously, that there had been a violation of Article 5 § 3. It awarded the applicant EUR 9,000 in respect of non-pecuniary damage and EUR 2,500 for costs and expenses. (The judgment is available only in English.)

Repetitive cases

Genovese and Others v. Italy (no. 9119/03) ***Violation of Article 1 of Protocol No. 1***
The six applicants, Marianna Genovese and Rocco, Mario, Vittorio, Antonio and Alessandro Mudò, are Italian nationals who were born in 1912, 1931, 1932, 1937, 1940 and 1943 respectively. They live in Sicily (Italy).

The authorities took possession of land belonging to the applicants with a view to expropriating it and began to carry out building work on that land. Since no expropriation order had been issued and no compensation paid to the applicants, they brought proceedings seeking damages for the unlawful occupancy of their land.

The applicants submitted that the occupancy of their land had interfered with their right to the peaceful enjoyment of their possessions, in violation of Article 1 of Protocol No. 1 (protection of property).

The Court considered that the loss of all ability to dispose of the land, combined with the impossibility of remedying the situation, amounted to *de facto* expropriation, in breach of the applicants' right to peaceful enjoyment of their possessions. It accordingly held, unanimously, that there had been a violation of Article 1 of Protocol No. 1. The Court found that the question of the application of Article 41 (just satisfaction) was not ready for decision and therefore reserved it. (The judgment is available only in French.)

Violation of Article 6 § 1 (fairness)
Levin v. Russia (no. 33264/02) ***Violation of Article 1 of Protocol No. 1***
The applicant, Aleksandr Fedorovich Levin, is a Russian national who was born in 1955 and lives in Obninsk (Russia).

Having taken part in the clean-up operations at the site of the Chernobyl nuclear plant disaster, he was subsequently registered as disabled and granted a special disability pension. In January 2000 he successfully challenged the amount of the monthly allowance due to him. The judgment in his favour remained unenforced for more than 2 years.

He complained about the prolonged non-enforcement of the final judgment in his favour, relying on Article 6 § 1 (access to a court) and Article 1 of Protocol No. 1 (protection of property).

By failing over a considerable period of time to take the necessary measures to comply with the final judgment, the Russian authorities had prevented the applicant from receiving the payment that he could reasonably have expected. The Court thus held, unanimously, that there had been a violation of Article 6 § 1 and of Article 1 of Protocol No. 1.

Under Article 41 (just satisfaction), the Court awarded the applicant the equivalent of EUR 810.73 in respect of pecuniary damage and EUR 2,500 for costs and expenses. (The judgment is available only in English.)

Violation of Article 6 § 1 (fairness)

Özsoy v. Turkey (no. 58397/00)
Yurtsever v. Turkey (no. 47628/99)
Hüseyin Özsoy, a Turkish national who was born in 1972, was sentenced in 1999 to the death penalty, subsequently commuted to life imprisonment, for being a member of the PKK. Ali Engin Yurtsever, a Turkish national who was born in 1966, was sentenced in 1997 to 12 years and six months' imprisonment for belonging to the DHKP/C.

Relying on Article 6 § 1 (right to a fair trial), the applicants contended that their case had not been heard by an independent and impartial court, because of the presence of a military judge on the bench of the state security court. The applicant in the case of ***Özsoy v. Turkey*** also complained about the length of the proceedings against him (some six years and two months at two levels of jurisdiction).

The Court held, unanimously in those two cases, that there had been a violation of Article 6 § 1 because of the lack of independence and impartiality of state security courts. Moreover, in the case of ***Özsoy v. Turkey*** the Court held, unanimously, that there had been no violation of Article 6 § 1 as regards the length of the proceedings.

The Court reiterated that when it found an applicant to have been convicted by a court that was not independent and impartial within the meaning of Article 6 § 1, the most appropriate form of redress was normally to ensure a retrial by an independent and impartial tribunal in due course. It noted that Mr Özsoy had not submitted any claims for costs or damages, and considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Yurtsever, to whom it awarded EUR 1,000 for costs and expenses. (The judgments are available only in French.)

Violation of Article 1 of Protocol No. 1

Reçber v. Turkey (no. 52895/99)
Yalçınkaya v. Turkey (no. 14796/03)
Yayan v. Turkey (no. 66848/01)
In these three cases the applicants, all of whom are Turkish nationals, complained of delays in the payment of compensation awarded to them following the expropriation of their property. They further submitted that the amounts they had been paid had not taken into account of the actual rate of inflation between the time at which they had been assessed and the date of payment. They relied on Article 1 of Protocol No. 1 (protection of property) to the Convention. In the case of ***Yalçınkaya v. Turkey*** the applicant also complained that the length of the proceedings had breached Article 6 § 1 (right to a fair hearing within a reasonable time).

The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1 in all three cases and that it was unnecessary to examine separately the complaint under Article

6 § 1 in the case of ***Yalçınkaya v. Turkey***. The Court awarded Mrs Yalçınkaya EUR 2,500 for pecuniary damage and dismissed the applicants' claim for just satisfaction in the other two cases. (The ***Reçber*** and ***Yayan*** judgments are available only in English and the ***Yalçınkaya*** judgment is available only in French.)

Length-of-proceedings case

In the following case, the applicant complained of the excessive length of civil proceedings.

Latif Fuat Öztürk v. Turkey (no. 54673/00) ***Violation of Article 6 § 1 (length)***
The Court awarded:
For non-pecuniary damage: EUR 3,000
(The judgment is available only in English.)

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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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