EUROPEAN COURT OF HUMAN RIGHTS

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HEARINGS IN MARCH

The European Court of Human Rights will be holding the following **four** hearings in **March 2009**:

Wednesday 4 March 2009: **9.15 a.m.**

Grand Chamber

Kart v. Turkey (application no. 8917/05)

The applicant, Atilla Kart, is a Turkish national who was born in 1954 and lives in Ankara.

The case concerned Mr Kart's complaint that he could not defend his name in criminal proceedings against him because, as a member of parliament (MP), he was subject to parliamentary immunity.

In the parliamentary elections of 3 November 2002 he was elected to the Turkish National Assembly as a member of the People's Republican Party (CHP).

Prior to his election he practised as a lawyer and, in the course of his professional activities, two sets of criminal proceedings were brought against him, one for insulting a lawyer and the other for insulting a public official.

As an MP he enjoyed parliamentary immunity. Under Article 83 of the Turkish Constitution, no MP suspected of having committed an offence before or after his election could be arrested, questioned, detained or prosecuted unless the National Assembly decided to lift his immunity.

The applicant requested that his immunity be lifted, but the joint committee of the Assembly decided to stay the proceedings against him until the end of his term of office. The applicant objected, relying on his right to a fair hearing. The files concerning the applicant's request to have his immunity lifted remained on the agenda of the plenary Assembly for over two years, until the following elections, without ever being examined.

Mr Kart was re-elected in the parliamentary elections of 22 July 2007. In January 2008 the Speaker of the National Assembly informed him that the files concerning the lifting of his immunity were pending before the joint committee.

The applicant alleges in particular that the failure to lift his parliamentary immunity had prevented criminal proceedings from being brought against him, thereby denying him the right of access to a court, guaranteed under Article 6 § 1 of the European Convention on Human Rights, and the opportunity to clear his name.

In a judgment of 8 July 2008, the Court held, by four votes to three that there had been a violation of Article 6 § 1of the Convention.

On 1 December 2008, the case was referred to the Grand Chamber at the government's request.

Tuesday 10 March 2009**: 9 a.m.**

Chamber hearing on the merits

Suljagić v. Bosnia and Herzegovina (no. 27912/02)

The applicant, Mustafa Suljagić, is a citizen of Bosnia and Herzegovina who was born in 1935 and lives in Bosnia and Herzegovina.

Prior to the dissolution of the former Socialist Federal Republic of Yugoslavia the applicant deposited foreign currency in his bank accounts at the then Privredna banka Sarajevo – Osnovna banka Tuzla. In Bosnia and Herzegovina, as well as in other successor States of the former Yugoslavia, such savings are commonly referred to as "old" foreign-currency savings.

The applicant attempted to withdraw his funds on several occasions to no avail. His "old" foreign-currency savings, as well as those of all others in a similar situation, were subsequently converted into public debt and a repayment scheme was set up.

On 6 April 2005 the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina examined the applicant's and other similar situations in the context of a case known as *Besarović and 310 Others*. It considered the legislation of that period about "old" foreign-currency savings to be contrary to Article 6 of the European Convention on Human Rights because of a lack of procedural guarantees and also contrary to Article 1 of Protocol No. 1 to the Convention because of the lack of a fair balance between the general and the individual interests. The Human Rights Commission imposed certain general measures and awarded the applicant 500 convertible marks (BAM)[1] for non-pecuniary damage and legal costs.

Pursuant to the *Besarović and 310 Others* decision, Bosnia and Herzegovina passed the Old Foreign-Currency Savings Act 2006 on 15 April 2006 ("the 2006 Act"). It is still in force.

On 29 December 2006 the competent agency assessed the amount of the applicant's "old" foreign-currency savings at BAM 269,275.21. It included the applicant's original deposits and interest accrued by 31 December 1991 at the rate actually agreed (somewhere between 7.5% and 12.5%). Interest accrued from 1 January 1992 until 15 April 2006 (the date of entry into force of the 2006 Act) was cancelled and calculated afresh at the annual rate of 0.5% pursuant to section 4 of the 2006 Act. In 2007 the applicant received BAM 1,000 under section 18(3) of the 2006 Act. As regards the remaining sum (BAM 268,275.21), the

[1] The convertible mark (BAM) was pegged at par to the Deutsch mark (DEM). Since the replacement of the German mark by the euro (EUR) in 2002, the convertible mark effectively uses the same fixed exchange rate to the euro than the Deutsch mark (that is, 1 EUR = 1.95583 BAM).

applicant should have been issued with State bonds by 31 March 2008. This still remains to be done.

In accordance with the relevant Amortisation Plan, bonds are to be amortised in seven yearly instalments (7.5% of the principal amount on 27 September 2008, 9% on 27 September 2009, 11% on 27 September 2010, 12% on 27 September 2011, 13% on 27 September 2012, 15% on 27 September 2013, 15.5% on 27 September 2014 and 17% on 27 March 2015). Annual interest rate on bonds is to be calculated, at the rate of 2.5%, from 15 April 2006 and paid on 27 March and 27 September every year from 27 September 2008 until 27 March 2015. Once bonds have been issued, the applicant will be able to sell them on the Stock Exchange at the trade price.

The applicant alleges a breach of Article 1 of Protocol No. 1 (protection of property) to the Convention in that the 2006 Act failed to strike a fair balance between general and individual interests.

On 20 June 2006 the Court declared the application admissible. On 9 December 2008 the Court decided to adjourn all similar cases (more than 1,000 such cases with more than 10,000 applicants are already pending before the Court) pending the outcome of this case.

Wednesday 18 March 2009: **9.15 a.m.**

Grand Chamber

Gäfgen v. Germany (no. 22978/05)

The applicant, Magnus Gäfgen, is a German national who was born in 1975. He is currently in prison in Schwalmstadt (Germany).

The case concerned Mr Gäfgen's complaint, in particular, that he was threatened with ill-treatment by the police in order to make him confess to the whereabouts of J., the youngest son of a well-known banking family in Frankfurt am Main, and that the ensuing trial against him was not fair.

In July 2003 Mr Gäfgen was sentenced to life imprisonment for the abduction and murder of J.. The court found that his guilt was of a particular gravity, meaning that the remainder of his prison sentence cannot be suspended on probation after 15 years of detention.

The child, aged 11, had got to know the applicant, who at the time was a law student, through his sister. On 27 September 2002 the applicant lured J. into his flat by pretending that J.'s sister had left a jacket there. He then suffocated the child.

Subsequently, the applicant deposited a ransom demand at J.'s parents' home, requiring them to pay one million euros to see their child again. He abandoned J.'s corpse under the jetty of a pond one hour's drive away from Frankfurt.

On 30 September 2002 at around 1 a.m. Mr Gäfgen collected the ransom at a tram station. He was placed under police surveillance and was arrested by the police several hours later.

On 1 October 2002 one of the police officers responsible for questioning Mr Gäfgen, on the instructions of the Deputy Chief of Frankfurt Police, warned the applicant that he would face considerable suffering if he persisted in refusing to disclose the child's whereabouts. They considered that threat necessary as J.'s life was in great danger from lack of food and the cold. As a result of those threats, the applicant disclosed where he had hidden the child's body. Following that confession, the police secured further evidence, notably the tyre tracks of the applicant's car at the pond and the corpse.

At the outset of the criminal proceedings against the applicant, Frankfurt am Main Regional Court decided that all his confessions made throughout the investigation could not be used as evidence at trial as they had been obtained under duress, in breach of Article 136a of the Code of Criminal Procedure and Article 3 of the European Convention on Human Rights. However, the regional court did allow the use in the criminal proceedings of evidence obtained as a result of the statements extracted from the applicant under duress.

Ultimately, on 28 July 2003 the applicant was found guilty of abduction and murder and was sentenced to life imprisonment. It was found that, despite the fact that the applicant had been informed at the beginning of his trial of his right to remain silent and that all his earlier statements could not be used as evidence against him, he nevertheless again confessed that he had kidnapped and killed J. The court's findings of fact concerning the crime were essentially based on that confession. They were also supported by: the evidence secured as a result of the first extracted confession, namely the autopsy report and the tyre tracks at the pond; and, other evidence obtained as a result of the applicant being observed after he had collected the ransom money, later discovered in his flat or paid into his accounts.

The applicant lodged an appeal on points of law which was dismissed by the Federal Court of Justice on 21 May 2004. He subsequently lodged a complaint with the Federal Constitutional Court, which on 14 December 2004 refused to examine it. That court confirmed the regional court's finding that threatening the applicant with pain in order to extract a confession from him constituted a prohibited method of interrogation under domestic law and violated Article 3 of the Convention.

On 20 December 2004 the two police officers involved in threatening the applicant were convicted of coercion and incitement to coercion while on duty and were given suspended fines.

On 28 December 2005 the applicant applied for legal aid in order to bring official liability proceedings against the *Land* of Hesse to obtain compensation for being traumatised by the investigative methods of the police. Those proceedings are currently still pending.

The applicant complained that he was subjected to torture when questioned by the police. He further submitted that his right to a fair trial was violated notably by the use at his trial of evidence secured as a result of his confession obtained under duress. He relied on Articles 3 (prohibition of torture) and 6 (right to a fair trial) of the European Convention on Human Rights.

In a judgment of 30 June 2008, the Court held, by six votes to one, that the applicant might no longer claim to be the victim of a violation of Article 3; and, that there had been no violation of Article 6.

On 1 December 2008, the case was referred to the Grand Chamber at the applicant's request.

Tuesday 24 March 2009**: 9 a.m.**

Chamber hearing on the merits

Olafsson v. Iceland (no. 20161/06)

The applicant, Mr Vörður Ólafsson, is an Icelandic national who was born in 1961 and lives in Reykjavik. He is a Master Builder and a member of the Master Builders' Association ("the MBA"). Pursuant to the Industry Charge Act No. 134/1993 ("the 1993 Act") he was under an obligation to pay a levy, the so-called "Industry Charge", to the Federation of Icelandic Industries ("the FII"), an organisation of which the applicant was not a member and to which the MBA was not affiliated.

The 1993 Act provided that a charge of 0.08% should be levied on all industrial activities in Iceland with some exceptions in particular in the meat processing, milk processing and fish processing industries. State-owned companies established by special statute were not covered. Revenues from the Industry Charge were to be transferred to the FII and should be used for industrial development. More than 10,000 persons (legal persons and self-employed individuals) paid the Industry Charge. The FII's membership comprised between 1,100 and 1,200 members.

On 8 November 2004 Mr Ólafsson initiated proceedings against the State with the Reykjavik District Court requesting an order to invalidate the charges imposed on him in respect of the years 2001 to 2004. By a judgment of 13 July 2005 the District Court found in favour of the State and rejected the applicant's action. Mr Ólafsson then appealed to the Supreme Court of Iceland, arguing in particular that section 3 of the 1993 Act in fact meant that all individuals and companies engaged in particular business activities had to pay a membership due to the FII, irrespective of whether they were members. He considered that Article 14 of the Articles of the Federation, which provided for the membership charge, clearly reflected its nature in that, as was provided therein, FII members paying an Industry Charge transferring to FII should have that part deducted from their membership fees. Thus by the levy and collection of the charge, membership of the FII was in fact made compulsory for others, although they enjoyed no rights vis-à-vis the FII. Mr Ólafsson argued that the compulsory membership of the FII was incompatible with his right to freedom of association as protected by Article 74 § 2 of the Constitution and Article 11 of the European Convention on Human Rights. In addition he considered that by virtue of the 1993 Act he was unjustifiably taxed in excess of other. Finally, he submitted that the imposition of the charge amounted to discrimination in breach of Article 65 of the Constitution, as the taxation was dependent upon the ownership structure of an enterprise, and the enumeration of activity code numbers, on which the taxation was based, was haphazard in nature.

By a judgment of 20 December 2005 the Supreme Court rejected the applicant's appeal and upheld the District Court's judgment.

Mr Ólafsson complains under Articles 11 (freedom of assembly and association), 9 (freedom of thought, conscience and religion) and 10 (freedom of expression) of the Convention that

the imposition of an obligation by law to pay the Industry Charge to the FII did not pursue a legitimate aim and was not necessary in a democratic society.

He further complains that, in violation of Article 1 of Protocol No. 1 (protection of property) to the Convention, the Industry Charges in effect amounted to a separate taxation being imposed on a restricted group of citizens on top of their ordinary tax. This was without any condition that it be used for their benefit. On the contrary, the levy was to be transferred to another restricted group of citizens for the benefit of their interests.

Finally, the applicant complains that he had been the victim of discrimination in the sense of Article 14 (prohibition of discrimination) of the Convention in that there was no objective and reasonable justification for the selection of enterprises that were included in the list of those liable to pay the Industry Charge and of those which were excluded from such liability. There had thus been a violation of this provision, taken in conjunction with Articles 9, and/or 10, and/or 11 and/or Article 1 of Protocol No. 1.

On 2 December 2008 the Court declared the application admissible.

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Decisions, judgments and further information about the Court can be found on its Internet site (http://www.echr.coe.int).[2]

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[2] These summaries by the Registry do not bind the Court.