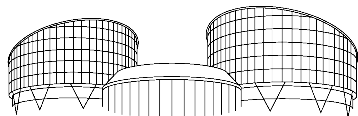

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 343 (2013)
28.11.2013

Forthcoming judgments

The European Court of Human Rights will be notifying in writing six judgments on Tuesday 3 December 2013 and 16 on Thursday 5 December 2013.

*Press releases and texts of the judgments will be available at **10 a.m.** (local time) on the Court's Internet site (www.echr.coe.int)*

Tuesday 3 December 2013

Ungváry and Irodalom Kft v. Hungary (no. 64520/10)

The applicants in this case are Krisztián Ungváry, a Hungarian historian born in 1969 who lives in Budapest and his publisher, Irodalom Kulturális Szolgáltató Kft, a Hungarian limited liability company, based in Budapest. The case concerns findings of defamation against the two applicants. In May 2007, a literary and political weekly owned by Irodalom Kft, *Élet és Irodalom*, published a study by Mr Ungváry. The article stated that Mr K., a judge of the Constitutional Court at the time, had worked during the Communist era as an official contact of the state security services, written reports for them, and advocated hard-line policies. After Mr K. brought successful proceedings against the paper, it printed a rectification in February 2008. However, Mr Ungváry repeated his allegation in interviews and in a book he co-authored which was published in April 2008. Mr K. brought a successful civil claim against the two applicants for defamation in February 2009, which was upheld by the Supreme Court in June 2010. It ordered the applicants to pay 2,000,000 Hungarian forints (HUF) together (approximately 7,000 euros (EUR)), and for Mr Ungváry to pay another HUF 1,000,000 (approximately EUR 3,500) himself. Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicants complain that the courts finding them liable for defamation infringed their right to free expression.

Bulea v. Romania (no. 27804/10)

The applicant, Bogdan Ioan Bulea, is a Romanian national who was born in 1973. The case concerns a travel ban that was imposed on him while criminal proceedings were brought against him, and the conditions of his imprisonment following his conviction. In January 2003 Mr Bulea was arrested and charged, and in March 2007 he was convicted of aggravated fraud and the use of forged documents. This was upheld on appeal in March 2010. Mr Bulea was sentenced to ten years' imprisonment, and he was obliged to pay the State 3,740,901,433 Romanian lei (ROL), which he had received illegally. Between November 2003 and the beginning of his sentence in April 2010, Mr Bulea was banned from leaving the country. He made numerous applications for this ban to be ended due to its excessive length, but it was upheld on the grounds that the crime he had been charged with was severe and that he had deprived the state treasury of a large sum, the length of the ban being justified given the complexity of the case and Mr Bulea's own attempts to delay it. After spending a few months in prison, on 15 July 2010 Mr Bulea was released for three months, after his application for temporary release was allowed by the Romanian courts. However, after this period ended he did not return to finish the remainder of his sentence, and an international warrant was issued for his arrest. He remains at large. Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, Mr Bulea complains of the conditions he was kept in during his imprisonment, including allegations that it was overcrowded, and lacked natural light and ventilation. He also relies on Article 2 of Protocol No. 4 (freedom of movement) to complain of the travel ban that was imposed upon him prior to the upholding of his conviction.

Văraru v. Romania (no. 35842/05)

The applicant, Diodor Neculai Văraru, is a Romanian national who was born in 1957 and lives in Hârlău (Romania). The case concerns the fact that he was unable to have persons who had testified against him at the investigation stage questioned by the Romanian courts. In November 2002 Mr Văraru was committed for trial for driving without a licence on a public road, making false statements and insulting a policeman. The charge of insult was corroborated by several witness statements taken by the police in Mr Văraru's absence, indicating that he had struck one of the policemen present when his car was stopped. Although the witnesses were summoned to appear in the proper manner, they did not come to the hearings. The courts concluded that it was impossible to question them and ordered that their statements be read out in public. By a judgment of October 2003, Mr Văraru was sentenced to 2 years' imprisonment. He lodged an appeal and asked, among other things, that the courts question the persons who had given evidence against him. His appeal was dismissed in February 2005, and in September 2005 a final judgment confirmed the soundness of the first-instance and appeal judgments. Relying on Article 6 §§ 1 and 3 (right to a fair trial), Mr Văraru complains that he was convicted of the charge of insult on the basis of witness statements which he was unable to challenge or whose authors he had been unable to question.

Ghorbanov and Others v. Turkey (no. 28127/09)

The applicants in this case are 19 Uzbek nationals, who were born between 1969 and 2008, and currently live in hiding in Turkey. The case concerns the deportation of the applicants by the Turkish authorities to Iran. The applicants are members of four families, who used to live in Uzbekistan. After leaving Uzbekistan and travelling through Tajikistan, Afghanistan and Pakistan, they eventually settled in Iran in 2001 and were also granted refugee status by the United Nations High Commissioner for Refugees. However, they fled to Turkey in September 2007, where they were granted refugee certificates by the UNHCR, received food rations, and sent their children to school. The applicants claim that on 12 September 2008 they were invited to go to the police headquarters in Van (Turkey), to receive their food rations and school stationary. They were then placed in detention, and forcibly deported to Iran later that evening. One week later they returned to Turkey illegally, but were collected from their homes on 11 October 2008 and, deported again later that day. They claim that they were left to walk between villages on the Iran-Turkey border for 10 days in winter conditions. After they asked the Iranian gendarmerie for help, they were detained for two days and then deported back to Turkey. 12 of them were minors at the time. Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), the applicants complain of their repeated summary deportation from Turkey to Iran without a deportation order. They also rely on Article 5 §§ 1, 2 and 4 (right to liberty and security / right to be informed of the reasons for deprivation of liberty/ right to have lawfulness of detention decided speedily by a court) to complain that their detention prior to being deported from Turkey to Iran in September and October 2008 was unlawful, that they were not given any reasons for the deprivation of their liberty, and that they had no way of challenging the lawfulness of it.

Repetitive cases

The following cases raise issues which have already been submitted to the Court.

Nasko Georgiev v. Bulgaria (application no. 25451/07)

The case concerns the applicant's complaint about the excessive length of criminal proceedings brought against him for, among other offences, aggravated robbery, and a travel ban imposed upon him following his sentencing and pending his rehabilitation. He relies on Article 6 § 1 (right to a fair trial within a reasonable time), Article 13 (right to an effective remedy) and Article 2 of Protocol No. 4 (freedom of movement).

Pietris S.A. v. the Republic of Moldova (no. 67576/10)

The case concerns the failure to award compensation to the applicant company following unlawful use of the review procedure by a third company. Relying on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), the applicant company complains about the Moldovan courts' failure to award damages to compensate for the breach of the principle of judicial certainty and of the right to peaceful enjoyment of its possessions. Under Article 13 (right to an effective remedy), the applicant company also alleges the absence of any remedy before a national court with powers to rule on the unlawful reopening of a trial.

Thursday 5 December 2013

Sharifi v. Austria (no. 60104/08)

The applicant, Wadjed Sharifi, is an Afghan national who was born in 1985 and lives in Feres (Greece). The case concerns his transfer by the Austrian authorities from Austria to Greece. In November 2007 Mr Sharifi left Afghanistan and travelled through Pakistan, Iran, Turkey, Greece and Italy to Austria, where he was apprehended by police. In August 2008 the Austrian authorities rejected his asylum application and ordered his transfer back to Greece, on the grounds that under Austrian and European Union law ("the Dublin II Regulation"), Greece was responsible for examining Mr Sharifi's asylum application as it was the first EU state that Mr Sharifi had entered. Mr Sharifi appealed the decision twice, but he was unsuccessful, and was transferred to Greece in October 2008. Mr Sharif complains that his transfer to Greece exposed him to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) as the country was unable to deal properly with asylum requests and provided inadequate conditions for asylum seekers.

Omerović v. Croatia (No. 2) (no. 22980/09)

The applicants, Mehmedalija Omerović and Sanmir Omerović, father and son, are Croatian nationals who were born in 1945 and 1971 respectively and live in Slatina (Croatia). The case concerns their access to Croatia's Supreme Court. In December 1987, Mehmedalija Omerović lodged a civil action claiming compensation against the local government, the state, a certain A.K. and an insurance company, in relation to an alleged physical assault. Mehmedalija's son, Sanmir Omerović, joined the action shortly after. After numerous appeals and re-hearings, the case was dismissed at the lowest level of the Croatian courts in March 2010, and dismissed again on appeal in September 2010. The applicants then lodged an appeal with the Croatian Supreme Court, with Mehmedalija Omerović making the case himself. The appeal was, however, declared inadmissible in November 2010 on the grounds that the application had not been made by a qualified lawyer or a person who had passed the Bar exam. Relying on Article 6 § 1 (access to court), Mehmedalija and Sanmir Omerović complain that they were denied access to the Croatian Supreme Court in the determination of their case, even though Mehmedalija Omerović had joined the Croatian Bar Association in 2003 and had submitted proof of his membership in the course of earlier proceedings.

Henry Kismoun v. France (no. 32265/10)

The applicant, Christian Cherif Henry Kismoun, is a Franco-Algerian national who was born in 1956 and lives in Villeurbanne (France). The case concerns the French authorities' refusal to change Mr Henry Kismoun's name, as requested by him. Having been listed in the French civil status register under his mother's surname, Henry, the applicant was recognised by his father, Mr Kismoun, in 1959. Abandoned by his mother at the age of three, he was taken in by his father, who took him to live in Algeria. There he was educated and carried out his military service under the name of Cherif Kismoun. It is also under this name, consistently used by his entourage in Algeria, that he is currently listed in the Algerian civil status register. In 1977 he attempted to re-establish contact with his mother, but she refused to enter a relationship with him. He learned on that occasion that he was

registered in France as Christian Henry. In 2003, following a first unsuccessful attempt, he resubmitted his request to have the surname Henry replaced by the surname Kismoun. In support of his claims, the applicant put forward, in particular, his mother's lack of interest in him. As he had failed to provide evidence of this, his appeal was dismissed in 2008. In addition, the French courts considered that the lack of interest referred to, even supposing that it was demonstrated, was not sufficient to confer on him a legitimate interest in changing his surname. He was refused leave to appeal to the *Conseil d'Etat* in 2009. Mr Henry Kismoun alleges, in particular, that the refusal to allow him to change his surname is in violation of Article 8 (right to respect for private and family life).

Just Satisfaction

Negrepontis-Giannisis v. Greece (no. 56759/08)

In 2009 the Greek courts held that the adoption in the United States of Mr Negrepontis-Giannisis by his uncle, who was a monk, was contrary to public policy and refused to recognise it. By a judgment of May 2011, the Court found that such a refusal amounted to a violation of Article 8 (right to respect for private and family life), taken alone and together with Article 14 (prohibition of discrimination), of Article 6 § 1 (right to a fair hearing), and of Article 1 of Protocol No. 1 (protection of property). Under Article 41 (just satisfaction), Mr Negrepontis-Giannisis claimed, primarily, re-examination of the Greek courts' decisions or, in the alternative, reopening of the proceedings before them, and several sums in respect of the pecuniary damage resulting from the loss of his inheritance rights, the non-pecuniary damage sustained and the costs and expenses incurred. As the question of the application of Article 41 of the Convention was not ready for decision, the Court invited the Government and Mr Negrepontis-Giannisis to submit their observations on that issue, and reserved it for a later date.

Vilnes and Others v. Norway (nos. 52806/09 and 22703/10)

The case concerns complaints by former deep sea divers that they are now disabled as a result of North Sea diving during the pioneer period of oil exploration from 1965 to 1990.

The applicants are five Norwegian nationals living in Norway, Dag Vilnes (born in 1949 and living in Tønsberg), Magn Håkon Muledal (born in 1953 and living in Førde), Bjørn Anders Nesdal (born in 1958 and living in Kristiansand), Knut Arvid Nygård (born in 1961 and living in Tananger) and Per Arne Jacobsen (born in 1954 and living in Larvik); and, a Swedish national, Mr Lindahl (born in 1942, and living in Avaldsnes, Norway) and an Icelandic national, Sigurdur P. Hafsteninsson (born in 1953 and living in Jersey, United Kingdom).

According to all seven applicants, they developed health problems as a result of bounce (short) and saturation (longer duration) diving jobs as well as, as regards three of the applicants, test dives. Most now suffer from obstructive lung disease, encephalopathy, reduced hearing and Post Traumatic Stress Disorder (PTSD).

All the applicants allege that this damage to their health was notably caused by shortcuts taken in their working conditions and safety during diving operations. They referred in particular to the authorities granting dispensations from the maximum length of a diver's umbilical as well as from the saturation time and that they made it possible for diving companies to use too-rapid decompression tables (which caused decompression sickness and the bends). They further complain that the State failed to provide them with adequate information about the risks involved in both deep sea diving and test diving. They rely on Articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment) and 8 (right to respect for private life).

Kutepov v. Russia (no. 13182/04)

The applicant, Valeriy Kutepov, is a Russian national who was born in 1968 and is currently in prison. The case concerns the criminal proceedings against Mr Kutepov, and the treatment he received for a spinal injury (myelopathy) during his subsequent detention. Following the discovery of a man's dismembered corpse, police found a bloodstained axe in the apartment of Mr Kutepov's mother. Mr Kutepov was detained on suspicion of the crime in November 2002, and in June 2003 he was convicted of murder and given a sentence of 16 years' imprisonment. In October 2003 his conviction was upheld by the Supreme Court on appeal. However, in July 2010 the Presidium of the Supreme Court ordered a re-examining of his case, because he was not represented by a lawyer at the appeal in 2003. In September 2010 Mr Kutepov's conviction was finally upheld once again, though his sentence was reduced to 14 years. Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Kutepov complains that during his detention he was not provided with appropriate medical care; in particular, he claims that the Russian authorities failed to diagnose and treat his myelopathy. He also relies on Article 6 § 3 (c) (right to legal assistance of own choosing) to complain that he was not provided with any legal assistance during his appeal hearing in October 2003.

Yevgeniy Gusev v. Russia (no. 28020/05)

The applicant, Yevgeniy Gusev, is a Russian national who was born in 1952 and lives in Volgograd (Russia). At the time he was the President of Vostok-Plus, which was a shareholder in Volga Aviaexpress Airlines. He was arrested in October 2003 on suspicion of fraud and forgery involving a Yak-42 aircraft. He was convicted in June 2005 and sentenced to four years' imprisonment. This judgment was upheld on appeal in October 2005 but the sentence was suspended for two years, with Mr Gusev being placed on probation and released. Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), he complains that on the days he was transported to the court-house for trial he was deprived of food and sleep. Further relying on Article 5 §§ 3 and 4 (right to liberty and security), he also makes a number of complaints about his detention, notably that it was based on insufficient grounds and lacked speedy judicial review.

Revision

Naumoski v. 'the former Yugoslav Republic of Macedonia' (no. 25248/05)

The applicant, Velko Naumoski, is a Macedonian national who was born in 1948 and lives in Skopje. Mr Naumoski was a teacher in a Skopje High School until December 2000 when he was made redundant. He was then dismissed in February 2001 because he refused to work in the school library after being made redundant. In a judgment of 27 November 2012 the Court held that there had been a violation of Article 6 § 1 (right to a fair trial within a reasonable time) on account of the excessive length of the proceedings concerning his dismissal as well as of the national courts' failure to communicate to him the defendant's observations submitted in reply to his appeals during those proceedings. On 14 February 2013 the Government requested revision of this judgment, informing the Court that it had based its findings on an incorrect date. This request for revision will be decided in a judgment on 5 December 2013.

Arskaya v. Ukraine (no. 45076/05)

The applicant, Lyubov Arskaya, is a Ukrainian and Russian national who was born in 1937 and lives in Moscow. The case concerns Ms Arskaya's allegation that her 42-year-old son died as a result of medical negligence in April 2001 when he was hospitalised for pneumonia and tuberculosis. The criminal proceedings into her complaint of medical malpractice were terminated in August 2008 for lack of evidence, the national authorities finding in particular that the applicant's son had repeatedly refused to accept medical treatment, which had aggravated his condition and ultimately resulted in his death. Relying on Article 2 (right to life), she alleges that her son, who showed signs of a mental

disorder, died on account of inadequate health-care regulations on patients refusing to consent to treatment, and that the official investigation into her son's death was inadequate.

Repetitive cases

The following cases raise issues which have already been submitted to the Court.

Denk v. Austria (no. 23396/09)
Willroider v. Austria (no. 22635/09)

The applicants in these two cases complain that their appeals to the Austrian courts about the suspension of their unemployment payments were dismissed without an oral hearing, despite the fact that they had specifically requested one. They rely on Article 6 § 1 (right to a fair hearing).

Valiyev and Others v. Azerbaijan (nos. 58265/09, 7526/10, 73346/10, 7928/11 and 16785/11)

This case concerns the non-enforcement of final judgments in the applicants' favour ordering the eviction from their flats of the families of internally displaced persons, who had illegally settled there. The applicants relied on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property).

Škrtić v. Croatia (no. 64982/12)

The case concerns the applicant's complaint about the national courts' judgments ordering her eviction from her flat. She relies on Article 8 (right to respect for private and family life and the home).

Length-of-proceedings cases

In the following cases, the applicants complain in particular about the excessive length of (non-criminal) proceedings.

Aleksić v. Croatia (no. 12422/10)
Keko v. Croatia (no. 21497/12)
Xypolitakos v. Greece (no. 25998/10)

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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.