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

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Forthcoming judgments

The European Court of Human Rights will be notifying in writing 11 judgments on Tuesday 2 December 2014 and eight on Thursday 4 December 2014.

*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 2 December 2014

Battista v. Italy (application no. 43978/09)

The applicant, Alessandro Battista, is an Italian national who was born in 1967 and lives in Naples (Italy). The case concerns his inability to obtain a passport or an identity card valid for travel abroad on account of his failure to pay maintenance for his children.

In August 2007, during his divorce proceedings, Mr Battista requested the guardianship judge to issue him with a new passport with the names of his two children added. By a decree of September 2007 the guardianship judge rejected his request on the grounds that there was a risk that Mr Battista, who paid only a small part of the monthly maintenance due to his children, would shirk his obligations completely if he were to travel abroad. His request was rejected by a further decree in February 2008, and the court dismissed appeals by Mr Battista against those decisions. In August 2012 Mr Battista requested the Naples guardianship judge to issue individual passports to his children. That request was dismissed in October 2012 on the grounds that the separation proceedings between the couple were still pending and that his wife, who had custody of the children, had objected, mainly on the grounds that since 2007 Mr Battista had failed to comply with his obligation to pay maintenance.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights and Article 2 of Protocol No. 4 (freedom of movement) to the Convention, Mr Battista complains of an interference with his private life and freedom of movement. He alleges, in particular, that there is no statutory rule preventing parents not paying maintenance from having a passport or having their children's names added to the passport.

Taraneks v. Latvia (application no. 3082/06)

The case concerns criminal proceedings against a court bailiff in the course of an undercover operation.

The applicant, Aivars Taraneks, is a Latvian national who was born in 1974 and lives in Salaspils (Latvia).

Mr Taraneks, who worked as a court bailiff, was convicted of corruption in a final decision of March 2006 by the Senate of the Supreme Court and sentenced to five years' imprisonment. He was convicted of demanding a bribe in the context of a commercial dispute between two private companies; notably he was accused of requesting money from the director of one of the companies, O.V., in exchange of not returning fur coats seized during the dispute to the director of the other company. His conviction was based on evidence obtained during an undercover operation carried out in December 2001 by the police, involving O.V. allegedly handing over marked money to Mr Taraneks and the secret recording of telephone conversations as well as conversations in person between Mr Taraneks, O.V. and the latter's lawyer. In his appeals before the national courts, Mr

Taraneks made a plea of entrapment, alleging that the sum he had requested from O.V. was for legitimate reasons – storage costs of the fur coats – and that he had not accepted the marked money from O.V.; it must have been placed in his office. He further alleged that a search carried out of his office immediately after his arrest in December 2001 was illegal. The Supreme Court dismissed those appeals in its decision of March 2006.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention, Mr Taraneks complains that he was the victim of entrapment by O.V. and his company's lawyer and that the national courts dismissed his complaint in this respect in a summary fashion. Further relying on Article 6 § 1 (right to a fair trial) and Article 8 (right to respect for private and family life, the home and the correspondence), he alleges that the recording of his conversations and the authorisation to search his office were in breach of domestic legislation and that his ensuing conviction was therefore unfair as it was based on illegally obtained evidence.

Romankevič v. Lithuania (no. 25747/07)

The applicant, Juljan Romankevič, was a Lithuanian national who was born in 1934 and died in 2008. His daughter and heir, who lives in the Vilnius Region, continued her father's application before the Court. The case concerns Mr Romankevič's complaint that he was deprived of land he owned in a village near Vilnius, without adequate compensation.

In June 2002 Mr Romankevič's property rights to a previously nationalised part of his late father's land, situated in the village of Gineitiškės, were restored to him. However, his title to the land was invalidated in a final court decision of January 2007 because the courts established that the authorities had allocated the wrong plot of land to him in their decision of 2002. The plot of land was subsequently returned to the State. No compensation was awarded but, in a decision of February 2009, Mr Romankevič was granted a new plot of land – of the same size as the previous plot of land – in the village of Gilužiai.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Romankevič complains about being deprived of his property, alleging that the new plot of land assigned to him was less valuable than the plot of land restored to him in 2002.

Urechean and Pavlicenco v. the Republic of Moldova (nos. 27756/05 and 41219/07)

The case concerns presidential immunity and defamation proceedings.

The applicants, Serafim Urechean and Vitalia Pavlicenco, are Moldovan nationals who were born in 1950 and 1953 respectively and live in Chişinău.

Both applicants, politicians of opposition parties, attempted to sue the (then) President of the Republic of Moldova, V. Voronin, for allegedly defamatory statements which he had made about them in the course of televised interviews in 2004 and 2007. Mr Voronin had accused Ms Pavlicenco of belonging to the KGB and Mr Urechean, Mayor of Chişinău at the time, of creating a powerful mafia-style system of corruption. The first-instance courts dismissed the applicants' action on the grounds that, under the Constitution and by way of an exception to the ordinary rules governing civil responsibility, the President of the Republic enjoyed immunity and could not be held liable for opinions which he expressed in the exercise of his mandate. The applicants' appeals were dismissed and the judgments at first instance were upheld in February 2005 and June 2007.

Relying on Article 6 § 1 (access to court), the applicants allege that they could not bring libel actions against the then president of their country on account of his immunity.

Cozianu v. Romania (no. 29101/13)

The applicant, Marius Cozianu, is a Romanian national who was born in 1970 and is currently detained in Bucharest-Jilava Prison.

The case concerns his conditions of detention in that prison, where he has been held since 21 December 2012 following his conviction and sentencing to five years' imprisonment for false imprisonment.

Relying on Article 3 (prohibition of inhuman or degrading treatment), he alleges poor conditions of detention and complains, in particular, of prison overcrowding and poor hygiene conditions.

Cutean v. Romania (no. 53150/12)

The applicant, Vasile Emilian Cutean, is a Romanian national who was born in 1965. He is currently serving a five-year sentence in Jilava Prison following his conviction of misappropriation of public funds. The case concerns his complaint about the conditions of his detention in various facilities as well as of his transport to court hearings on his case.

Mr Cutean, a former Secretary of State, was convicted in a final judgment of 7 February 2012 of authorising payments of approximately 75,000 euros from the account of his Secretariat to the account of an association of which he was president.

Relying on Article 3 (prohibition of inhuman or degrading treatment), he alleges overcrowding in the Bucharest Police Department's detention facility, Jilava Prison Hospital and Jilava and Rahova prisons and lack of lighting and ventilation in the vehicles in which he was transported to attend the hearings on his case. He also alleges under Article 6 (right to a fair trial) that the criminal proceedings against him were unfair. Notably, he complains that the original panel of judges examining his case at first-instance changed with none of the judges on the panel which then went on to convict him hearing him or the witnesses directly and that this shortcoming was not rectified on appeal.

Petrov v. Slovakia (no. 64195/10)

The applicant, Peter Petrov, is a Slovak national who was born in 1986 and lives in Bratislava.

The case concerns a number of complaints about his detention on suspicion of fraud. Mr Petrov was arrested on 5 February 2010 and remanded in custody. His numerous requests to be released were dismissed and his detention extended on the ground that there was a risk of him absconding and committing further offences. He was released on 5 September 2011. In a judgment of 13 September 2011 the Constitutional Court acknowledged, without granting any redress, that Mr Petrov had been detained without any legal grounds from 5 November – when an earlier decision to extend his detention had expired – to 8 November 2010 – when the decision extending Mr Petrov's detention following his refusal to accept a plea bargain was delivered to the prison where he was being held.

Relying in particular on Article 5 §§ 1, 3 and 4 (right to liberty and security/entitlement to trial within a reasonable time or to release pending trial/right to have lawfulness of detention decided speedily by a court), Mr Petrov complains that: his detention between 5 and 8 November 2010 was unlawful; the dismissal of his requests for release were arbitrary and the courts failed to convincingly explain why his continued detention was necessary; and the proceedings concerning his applications for release were unfair.

Emel Boyraz v. Turkey (no. 61960/08)

The case concerns a dismissal from public sector employment on grounds of gender.

The applicant, Emel Boyraz, is a Turkish national who was born in 1975 and lives in Elazığ (Turkey).

Having successfully sat a public-servant examination in 1999, Ms Boyraz was appointed to the post of security officer in a branch of a State-run electricity company. She worked on a contractual basis in that position for almost three years before being dismissed in March 2004 on account of her sex. She was informed that she would not be appointed because she did not fulfil the requirements of "being a man" and "having completed military service".

In the meantime, in September 2000 Ms Boyraz had lodged an action before the administrative courts challenging the electricity company's decision to dismiss her. In February 2006 the courts dismissed Ms Boyraz's case, taking into consideration an earlier decision by the Supreme Administrative Court in which it had held that the requirement regarding military service demonstrated that the post in question was reserved for male candidates and that this requirement was lawful given the nature of the post and the public interest. The judgment of February 2006 was subsequently upheld and Ms Boyraz's request for rectification ultimately dismissed in September 2008.

Relying on Article 14 (prohibition of discrimination), Ms Boyraz alleges that the decisions given against her in the domestic proceedings amounted to discrimination on grounds of sex. Also relying on Article 6 § 1 (right to a fair hearing within a reasonable time), she complains about the excessive length as well as the unfairness of the administrative proceedings to dismiss her, alleging in particular that the administrative courts had delivered conflicting decisions in identical cases.

Güler and Uğur v. Turkey (nos. 31706/10 and 33088/10)

The applicants, İhsan Güler and Sinan Uğur, are Turkish nationals who were born in 1964 and 1947 respectively and live in Ankara and İzmir (Turkey).

The case concerns the applicants' conviction in 2008 to ten months' imprisonment for propaganda in favour of a terrorist organisation, on account of their participation in a religious service organised in the premises of the Party for a Democratic Society (DTP) in memory of three individuals, members of the PKK (Workers' Party of Kurdistan, an illegal armed organisation), who had been killed by the security forces. In support of its judgment convicting the applicants, which was upheld on points of law, the Ankara Assize Court found, in particular, that the persons in whose memory the service had been held were members of a terrorist organisation, that they had been killed by the security forces in the course of actions conducted by that organisation and that there existed serious doubts as to the real motives for the gathering in view of the choice of venue, namely the premises of a political party in which the symbols of the illegal organisation had been displayed.

Relying on Articles 7 (no punishment without law), 9 (right to freedom of thought, conscience and religion) and 11 (freedom of assembly and association), the applicants allege that their conviction was based on their participation in a religious service which consisted in a simple public manifestation of their religious practice. They also consider that their conviction was not sufficiently foreseeable, having regard to the wording of the Anti-Terrorism Act. Under Article 14 (prohibition of discrimination) taken together with Articles 9 and 11, the applicants also allege that their conviction also amounted to discrimination against them on the basis of their Kurdish ethnic origin and their political opinions.

Cumhuriyetçi Eğitim Ve Kültür Merkezi Vakfı v. Turkey (no. 32093/10)

The applicant association, Cumhuriyetçi Eğitim Ve Kültür Merkezi Vakfı (Foundation for Republican Education and Culture, hereafter "the Foundation"), is a foundation established under Turkish law, which was set up in 1995 and has charitable status.

In this case, the foundation complains about the refusal to exempt it from paying its electricity bills, arguing that national legislation provides for such an exemption for places of worship.

The applicant foundation manages many *cemevis* in Turkey, which are premises dedicated to the religious practice of Alevism, a minority and heterodox branch of Islam. In particular, it manages the Yenibosna Cultural Centre, a complex which houses, among other things, the applicant foundation's headquarters, a restaurant, library, conference hall, classroom, a room for funerals and a *cemevi*.

In August 2006, submitting that the Foundation was a place of worship for the Alevi community, its director requested exemption from paying electricity bills, since the legislation provides that the

electricity bills for places of worship are paid from a fund administered by the Directorate of Religious Affairs (DAR). The courts dismissed the Foundation's claims, basing their decision on the DAR's opinion that the *cemevis* are not places of worship but places of assembly in which spiritual ceremonies are held. The total amount of the Yenibosna Centre's bills comes to 668,012.13 Turkish lira (TRY), or EUR 289,182, under the exchange rate at the relevant time.

Relying on Article 14 (prohibition of discrimination) taken together with Article 9 (right to freedom of thought, conscience and religion), the applicant foundation submits that, although the electricity bills of places of worship are usually paid by the Directorate of Religious Affairs, it has been deprived of this privilege on account of the failure in Turkey to recognise the *cemevis* as places of worship.

Length-of-proceedings case

In the following case, the applicant complains in particular about the excessive length of administrative proceedings.

Siermiński v. Poland (no. 53339/09)

Thursday 4 December 2014

Lonić v. Croatia (no. 8067/12)
Pozaić v. Croatia (no. 5901/13)

Both cases concern allegations of inadequate conditions of detention in prisons in Croatia.

The applicant in the first case, Davor Lonić, is a Croatian national who was born in 1956 and lives in Bibinje (Croatia). In April 2010 he was found guilty of a number of offences involving child abuse. In May 2011 the Supreme Court dismissed Mr Lonić's appeal and sentenced him to 12 years' imprisonment. He made a number of complaints to the prison authorities and the national courts during the criminal proceedings against him about the conditions of his detention on remand in Pula Prison, alleging overcrowding, poor hygiene and lack of outdoor exercise. He was eventually transferred to Zagreb Prison in August 2011. His constitutional complaint about the conditions of detention was declared inadmissible in November 2011 because by then he was no longer being detained in Pula Prison. In the same decision the Constitutional Court also dismissed his complaint about the unfairness of the proceedings against him.

The applicant in the second case, Vladimir Pozaić, is a Croatian national who was born in 1977 and lives in Zagreb. In September 2010 Mr Pozaić, convicted in separate judgments between 2005 and 2008 of drug abuse and robbery, was sentenced to a single prison term of two years and eight months. He made a number of complaints before the national courts about the size of his cell, overcrowding and lack of medical care. His constitutional complaint was declared inadmissible in June 2012.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), both applicants allege inadequate conditions of detention and a lack of effective remedies for those complaints. Mr Lonić complains about the conditions of his detention between September 2010 and August 2011 in Pula Prison and Mr Pozaić about the conditions of his detention between March 2010 and January 2011 in Bjelovar Prison.

Mr Lonić also complains under Article 6 §§ 1 and 3 (c) (right to a fair trial) that, in the appeal proceedings, an opinion submitted by the State Attorney's Office was not forwarded to the defence and that the appeal hearing before the Supreme Court on his case was held in his absence.

Ali Samatar and Others v. France (nos. 17110/10 and 17301/10)
Hassan and Others v. France (nos. 46695/10 and 54588/10)

These two cases concern ten Somali nationals who, having seized vessels flying the French flag off the Somali coast, were arrested by the French authorities and subsequently transferred to France, where they were prosecuted for acts of piracy.

The applicants in the first case are Abdurahman Ali Samatar (application no. 17110/10), born in 1984, and also Ismaël Ali Samatar, Abdulqader Guled Said, Mohamed Said Hote, Abdullahi Yousouf Hersi and Daher Guled Said (application no. 17301/10), born in 1981, 1978, 1962, 1987 and 1978 respectively.

The applicants in the first case were implicated in the hijacking of the ship "Le Ponant" off the Somali coast on 4 April 2008. On 5 April 2008 the Somali Transitional Federal Government (TFG) sent a diplomatic note to the French authorities, authorising them to enter Somali territorial waters and to take all necessary measures – including the proportionate use of force – in the context of the crisis. The applicants were arrested on 11 April 2008 by the GIGN (the national gendarmerie's task force) in Somali territory and placed under military control on board a French ship, until, on 15 April, the Somali authorities gave their agreement to the suspects' transfer to France. They arrived by plane at 5.15 p.m. on 16 April 2008 and were placed in police custody. On 18 April they were presented before an investigating judge and placed under investigation.

In the second case, the applicants are Yacoub Mohammed Hassan, Cheik Nour Jama Mohamoud (application no. 46695/10) and Abdulhai Guelleh Ahmed (application no. 54588/10), who were born in 1983, 1979 and 1975 respectively.

Following the hijacking of the French yacht "Le Carré d'As" off the Somali coast on 2 September 2008, these applicants were arrested by the French navy on 16 September while they were within Somali territorial waters. On 2 June 2008 the United Nations Security Council had adopted a resolution authorising, for a six-month period, the States cooperating with the Somali TFG in the fight against piracy to enter Somali's territorial waters and use there all available means to repress acts of piracy and armed robbery. The applicants were placed under military control on the French ship "Le Courbet". On 23 September 2008 they were transferred to France by air and placed in police custody on their arrival. On 25 September 2008 the applicants were presented to an investigating judge and placed under investigation.

Ruling on appeals by the applicants in both cases, the Investigation Division of the Paris Court of Appeal held that the suspects' arrest and administrative detention pending placement in police custody had not been contrary to Article 5 of the European Convention on Human Rights, having regard in particular to the exceptional and insurmountable temporal and geographical circumstances in these cases. Appeals by the applicants on points of law were dismissed.

Relying on Article 5 § 1 (right to liberty and security), the applicants in the case of *Hassan and Others* allege that their detention by the French military authorities from 16 to 23 September 2008 had no legal basis.

In both cases, relying on Article 5 § 3 (right to liberty and security), the applicants complain that they were not "brought promptly before a judge or other officer authorised by law to exercise judicial power" after their arrest by the French army in Somali territorial waters / on Somali territory.

Mr Ahmed (*Hassan and Others*) and the applicants in the case of *Ali Samatar and Others* also complained, under Article 5 § 4 (right to have lawfulness of detention decided speedily), that they did not have access to a court to challenge the lawfulness of their arrest or detention until they were placed in police custody in France.

Mr Ahmed also alleges that his rights under Article 5 § 2 (right to be informed promptly of the accusations against him) were breached. Mr Samatar, relying on Article 6 § 1 (right to a fair hearing),

complains about the fact that the Court of Cassation relied on "insurmountable circumstances" to justify his detention, without having permitted adversarial argument on that point.

Aleksandr Valeryevich Kazakov v. Russia (no. 16412/06)

The applicant, Aleksandr Valeryevich Kazakov, is a Russian national who was born in 1960 and lives in Petropavlovsk-Kamchatskiy (Russia). The case concerns the failure to ensure attendance of witnesses at his criminal trial for offences allegedly committed in collusion with a criminal gang.

In December 2002 Mr Kazakov was formally charged with more than ten counts of financial fraud, theft and embezzlement committed in collusion with a criminal gang. The trial opened in January 2003. By the end of the trial, the prosecutor dropped all charges against him except for an attempted theft of scrap metal. In June 2005 he was found guilty of that charge and sentenced to six years' imprisonment, later reduced to four years on appeal.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Kazakov complains that the courts failed to ensure the presence of certain witnesses at his trial either for the defence or for the prosecution, namely the director of the scrap processing plant, whose testimony was of decisive importance for his subsequent conviction.

Krikunov v. Russia (no. 13991/05)

The case concerns a complaint about lack of reasons for detention on remand.

The applicant, Vladimir Krikunov, is a Russian national who was born in 1967 and before his conviction lived in the Volgograd Region (Russia).

Between 2003 and 2008 Mr Krikunov was convicted in three separate sets of criminal proceedings of theft and robbery, manslaughter and robbery and illegal possession of firearms. In the second set of proceedings against him he was detained on remand from December 2003 on the grounds of the gravity of the charges against him, his previous conviction and his alcohol abuse.

Relying on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr Krikunov alleges that his detention on remand in the second set of criminal proceedings was not sufficiently justified. He notably alleges that, after receiving the case for trial in June 2004, the national courts simply maintained the initial custodial measure against him of December 2003 without giving reasons.

Navalnyy and Yashin v. Russia (no. 76204/11)

The applicants, Aleksey Navalnyy and Ilya Yashin, are Russian nationals who were born in 1976 and 1983 respectively and live in Moscow. Both applicants are political activists and opposition leaders. Mr Navalnyy is also a well-known anti-corruption campaigner and a popular blogger. Mr Yashin is a leader of the political movement "Solidarnost".The case concerns their arrest at a spontaneous demonstration, their subsequent detention and the administrative proceedings against them.

Both applicants were arrested following their participation in an authorised demonstration on 5 December 2011 to protest against the allegedly rigged elections of the State Duma, which had taken place the previous day. The applicants allege that they were arrested while on their way back to Mr Navalnyy's car and that they did not put up any resistance against the police. They were subsequently placed in police detention – consecutively in three different police stations – until being brought to court the following day. On that day, both applicants were sentenced to 15 days' administrative detention for having disobeyed a lawful order of the police. Their appeals were dismissed on 7 December 2011.

The applicants complain that their arrest and detention violated their rights under Article 10 (freedom of expression) and Article 11 (freedom of assembly and association). They further maintain that the administrative proceedings were in breach of Article 6 §§ 1 and 3 (b), (c), and (d) (right to a

fair trial / right to adequate time and facilities for preparation of defence / right to legal assistance of own choosing / right to obtain attendance and examination of witnesses), in particular because video recordings of their arrest were not admitted as evidence and witnesses they had requested were not examined. Relying on Article 5 § 1 (right to liberty and security), they complain that their arrest and police detention was arbitrary and unlawful. They also complain of the poor conditions of their detention and of the lack of legal remedies in that respect, relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy). Finally, they allege that their arrest, detention and the administrative charges against them were in violation of Article 18 (limitation on use of restrictions on rights).

Repetitive case

The following case raises issues which have already been submitted to the Court.

Pečenko v. Slovenia (no. 6387/10)

The applicant in this case complains of the allegedly poor conditions of his detention in Ljubljana prison, notably on account of severe overcrowding, excessive restrictions on out-of-cell time, inadequate health care, and exposure to violence from other inmates due to insufficient security, as well as of not having an effective remedy in domestic law with regard to his complaints. He relies in particular on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy).

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