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

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Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 18 judgments on Tuesday 27 January 2015 and 98 judgments and / or decisions on Thursday 29 January 2015.

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

Tuesday 27 January 2015

Neshkov and Others v. Bulgaria (applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12, and 9717/13)

The case concerns the conditions of detention in various correctional facilities in Bulgaria.

The applicants, Svetlomir Neshkov, Georgi Tsekov, Pavel Simeonov, Yordan Yordanov, and Ivan Zlatev, are Bulgarian nationals who were born in 1971, 1973, 1976, 1962, and 1965 respectively.

Mr Neshkov is currently detained in Belene Prison. He complains of the conditions of his detention in Varna Prison from 2002 to 2005 and in Stara Zagora Prison on a number of occasions between 2002 and 2008 when transferred there for short periods of time to attend court hearings on his case.

Mr Tsekov and Mr Zlatev both complain of the conditions of detention in Burgas Prison where Mr Zlatev has been detained since September 2002 and where Mr Tsekov was held between January 2012 and February 2014. Mr Tsekov is currently detained in Stroitel, an open-type prison hostel attached to Burgas Prison.

Mr Yordanov complains of the conditions of his detention in four correctional facilities in which he has successively been kept, namely in Sofia Prison between August and October 2007, in Pleven Prison between 2007 and 2010, in Lovech Prison where he was transferred in July 2010 and in Atlant Prison Hostel, a closed-type prison in Troyan attached to Lovech Prison, where he was transferred in January 2012 and is currently still detained.

Mr Simeonov was detained in Burgas Prison until 15 July 2014, when he was released. His current whereabouts are unknown.

The complaints notably concern severe overcrowding, poor hygiene and lack of access to toilets (meaning the applicants had to go to the toilet in a bucket in the presence of other inmates) in all the facilities where the applicants are or have been held.

When the case was communicated to the Bulgarian Government by the ECHR in March 2014, the parties were invited to express their views on whether the case revealed a systemic problem in Bulgarian detention facilities and would be suitable for the Court's pilot-judgment procedure.

There are approximately 40 applications against Bulgaria concerning detention conditions which are currently awaiting first examination.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicants allege that the conditions of their detention in various correction facilities in Bulgaria are/were inhuman and degrading. Further relying on Article 13 (right to an effective remedy), Mr Neshkov alleges a lack of effective domestic remedies in that respect.

Toni Kostadinov v. Bulgaria (no. 37124/10)

The applicant, Toni Kostadinov, is a Bulgarian national who was born in 1960 and lives in Vratsa (Bulgaria). The case concerns his pre-trial detention and respect for his right to be presumed innocent.

On 19 December 2009 Mr Kostadinov, former officer of the national police, was arrested on suspicion of being part of a criminal gang. He was remanded in custody with nine other suspects, as the court, relying on evidence gathered during the investigation, had found plausible reasons to suspect that the suspects were members of an organised criminal group, with a high risk that they might commit other offences. On the day after the applicant's arrest, the police superintendent in Plovdiv and the Minister of the Interior gave a press conference at which it was indicated that Mr Kostadinov had been arrested for being involved in a gang of burglars. Mr Kostadinov's applications for release were rejected until 23 June 2010, when he was released on bail in view of the advanced stage of the criminal proceedings.

Relying on Article 5 §§ 1 (c), 3, 4 and 5 (right to liberty and security and to a speedy decision on the lawfulness of detention), Mr Kostadinov alleges that he was arrested without there being sufficient information to suspect him of a criminal offence, that he was detained for more than six months, that he was not able to dispute the lawfulness or necessity of his detention and that he did not have the possibility of obtaining redress for the damage sustained. He further complains that the remarks made at the press conference breached his right to be presumed innocent under Article 6 § 2.

Yagnina v. Bulgaria (no. 18238/06)

The applicant, Denka Yagnina, is a Bulgarian national who was born in 1952 and lives in Voyvodinovo (Bulgaria). The case concerns her complaint about a medical commission's failure to fully assess her state of health in order to determine her entitlement to a disability pension.

Ms Yagnina drove tractors and other heavy machines for a number of years before developing dysfunctions of the nervous system. As a result, in 1985 she was declared as having a third degree disability and granted a disability pension. However, following a medical examination in November 2000, she was assessed as having lost 40% of her ability to work, which was not sufficient to entitle her to a disability pension. She challenged this decision before the competent medical authorities without success and then brought judicial review proceedings. The courts delivered two final judgments in her favour, in December 2002 and July 2005 respectively, ordering the commission to assess her state of health on the basis of the conclusions of two medical expert reports accepted by the courts in the proceedings. The courts also pointed out that it was within the exclusive remit of the medical commission to determine Ms Yagnina's percentage of disability. Following the judgments, in two separate decisions the medical commission assessed Ms Yagnina's reduced ability to work respectively at 30% and 40% which was not sufficient to grant her a disability pension.

Relying on Article 6 § 1 (right to a fair hearing), Ms Yagnina alleges that, although the judgments in her favour found that she suffered from a number of permanent medical conditions and requested the medical commission to carry out its assessment on that basis, the medical commission – refusing to comply with the final judgments – excluded from its assessment some of those conditions, which resulted in her being denied the pension. Further relying on Article 13 (right to an effective remedy), she also complains that she had no effective remedy for implementing the final judgment in her favour.

Rinas v. Finland (no. 17039/13)

The applicant, Pavel Rinas, is a Russian national who was born in 1960 and lives in Vantaa (Finland). The case concerns his complaint about having been punished twice for the same tax offence.

In taxation proceedings brought against him in Finland for receiving disguised dividends from his foreign companies Mr Rinas had tax surcharges imposed on him for the tax years 1999 to 2000 and 2002 to 2004. These taxation decisions against him became final in September 2012 when the Supreme Administrative Court refused Mr Rina leave to appeal.

In parallel, Mr Rinas had criminal proceedings brought against him and he was convicted in June 2009 of aggravated tax fraud for the years 1999 to 2000 and 2002 to 2004, given a suspended prison sentence of one year and six months and ordered to pay compensation to the tax authorities. This judgment became final in May 2012 when the Supreme Court gave its final judgment against Mr Rinas.

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice), Mr Rinas complains about being tried and convicted for the same offence – failure to declare income to the tax authorities – in both tax surcharge and tax fraud proceedings, alleging that this amounts to double jeopardy.

Kincses v. Hungary (no. 66232/10)

The applicant, István Kincses, is a Hungarian national who was born in 1960 and lives in Debrecen (Hungary). He is a practising lawyer and complains that he was fined for criticising the judge sitting on one of his cases.

In March 2003 Mr Kincses, who was representing a hunting association in civil proceedings, filed a motion for bias against the sitting judge alleging his professional incompetence and personal dislike for the respondent party. As a result, in April 2003 disciplinary proceedings were brought against him for infringing the dignity of the judiciary and he was eventually fined by the Szeged Bar disciplinary board for 170,000 Hungarian forints (approximately 570 euros). In the ensuing judicial review proceedings, the Budapest Regional Court dismissed Mr Kincses' action challenging this disciplinary sanction, finding that the statements Mr Kincses had made in his motion were insulting both to the sitting judge and to the court as an institution. This finding was then endorsed in April 2010 by the Supreme Court, which added that the reason for the disciplinary measure was not Mr Kincses' challenging the sitting judge's professional conduct as such but the tone of his submissions.

Relying in essence on Article 10 (freedom of expression), Mr Kincses alleges that the fine against him breached his right to express himself in his capacity as an attorney. Further relying on Article 6 § 1 (right to a fair hearing within a reasonable time), he complains about the excessive length of the judicial review to contest the disciplinary proceedings against him and the fine.

Paradiso and Campanelli v. Italy (no. 25358/12)

The applicants, Donatina Paradiso and Giovanni Campanelli, are Italian nationals who were born in 1967 and 1955 respectively and live in Colletorto (Italy). They are husband and wife. The case concerns the removal from the couple of a baby who had been born in Russia to a surrogate mother and who was subsequently found to have no biological relationship to the would-be parents.

After unsuccessfully attempting to use *in vitro* fertilisation Ms Paradiso and Mr Campanelli opted for a surrogacy arrangement to become parents. For that purpose they entered into an agreement with the company Rosjurconsulting in Russia. A surrogate mother was found and given *in vitro* fertilisation and a baby was born on 27 February 2011 in Moscow. In accordance with Russian law, Ms Paradiso and Mr Campanelli were registered as the baby's parents.

In April 2011 the Italian Consulate in Moscow delivered documents allowing the child to leave for Italy. A few days after their arrival in Italy, Mr Campanelli unsuccessfully asked the municipal authority of Colletorto to register the birth. As a DNA test had revealed that Mr Campanelli was not the child's biological father, the minors court decided on 20 October 2011 that the child should be

removed immediately from the applicants on the ground that there was no biological relationship between them. The baby was placed in a children's home, without Ms Paradiso and Mr Campanelli being informed of its location or allowed any contact, then in January 2013 the baby was entrusted to foster parents. In April 2013 the refusal to register the Russian birth certificate was confirmed and the issuance of a new birth certificate ordered, giving a new name and indicating that the child was born in Moscow on 27 February 2011 to unknown parents. On 5 June 2013 the minors court declared that the parents no longer had the capacity to act in an adoption procedure initiated by them, given that they were not the parents or relatives of the child.

The applicants allege in particular that the refusal to acknowledge the parent-child relationship established abroad by registering the child's birth certificate in Italy, and the child's removal from them, were incompatible with Article 8 (right to respect for private and family life).

Just satisfaction

JGK Statyba Ltd v. Lithuania (no. 3330/12)

The applicant is JGK Statyba Ltd, a private construction company registered in Lithuania.

The case concerned the length of two sets of civil proceedings relating to the ownership of two houses and restriction of the applicant company's property rights by the domestic courts which had seized those houses in order to secure satisfaction of civil claims lodged by private individuals. The applicant company, whose main activity is construction and real estate, was prohibited for over ten years from selling or transferring the disputed property until the cases had been examined. Initially, a final and binding court decision of 1995 had recognised the company's ownership of the same houses and dismissed the action by several private individuals for attribution of ownership rights. In July 1996 the company lodged a civil claim for the eviction of one of the unsuccessful claimants from one of the houses. The courts eventually allowed the company's claim and dismissed the counterclaim in a decision ultimately upheld in February 2010, and the house was returned to the company in July 2010. The second set of proceedings was brought in June 1996 by another unsuccessful claimant, seeking acknowledgment of his ownership rights to one of the houses. The latter claim was eventually dismissed by a final decision in January 2006. Relying on Article 6 § 1 (right to a fair trial within a reasonable time) and Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant company complained that the proceedings had been unreasonably long and that, as a result of the prolonged seizure of the houses, it had been unable to use its property, leading to considerable financial losses and an interference with the company's activity.

In its principal judgment of 5 November 2013 the Court held that there had been violations of Article 6 § 1 and Article 1 of Protocol No. 1 as regards the applicant company's complaints, and reserved the question of the application of Article 41 (just satisfaction) of the Convention for examination at a later date.

The Court will deal with this question in its judgment of 27 January 2015.

Just satisfaction

Pyrantienė v. Lithuania (no. 45092/07)

The applicant, Kotrina Pyrantienė, is a Lithuanian national who was born in 1942 and lives in Akademija, Kaunas Region (Lithuania).

The case concerned Ms Pyrantienė's complaint about the level of compensation she had received when the Lithuanian authorities had repossessed a plot of land she had owned to grow vegetables to sell at market. In 1996 Ms Pyrantienė acquired the 0.5 hectare plot of land from the State. However, a number of years later the sale was quashed by the Lithuanian courts because it was found that the State did not have the right to sell the property. A valuation of the property in 2005 found that it was worth 112,500 Lithuanian litai (LTL - approximately 32,580 euros (EUR)). Yet in October 2006 the Lithuanian courts held that Ms Pyrantienė would only receive LTL 1,466 in

compensation (approximately EUR 430), as this was the value of the investment vouchers she had used to buy the land in 1996. Her appeal of this level of compensation was dismissed by the Lithuanian Court of Appeal in February 2007. Relying on Article 1 of Protocol No. 1 (protection of property), Ms Pyrantienė complained that as a legitimate owner who had acquired the property in good faith, she had not been properly compensated for the deprivation of her land as the Lithuanian courts had not taken into account the plot's market value in 2005 but had instead relied on its nominal value in 1996.

In its principal judgment of 12 November 2013 the Court held that there had been a violation of Article 1 of Protocol No. 1 and reserved the question of the application of Article 41 (just satisfaction) of the Convention for examination at a later date.

The Court will deal with this question in its judgment of 27 January 2015.

Alecu and Others v. Romania (no. 56838/08 and 80 other applications)

The applicants are 81 Romanian nationals who were born between 1934 and 1978 and live in Bucharest, Popeşti-Leordeni, Braşov, Voluntari (Ilfov), Piteşti, Albota (Argeş), Cluj-Napoca, Ploieşti, Domneşti (Argeş), Piteşti (Argeş), Cărpiniş (Timiş), Timişoara, Curtea de Argeş, Grădiştea (Vâlcea), Constanţa, Cărbunari (Maramureş), and Codlea, all in Romania, and in Villasequilla, Spain.

The applicants are the victims or heirs of victims of the armed crackdown on demonstrations against the communist dictatorship, beginning on 21 December 1989 in Bucharest and in other cities in the country, which led to the collapse of the regime (see Chamber judgment *Association "21 December 1989" and Others v. Romania* of 24 May 2011).

The case concerns the investigation into those events.

All the applicants made their allegations in the context of the investigation opened by official order in 1990 concerning the armed crackdown on demonstrations in the cities of Bucharest, Timişoara, Oradea, Constanţa, Craiova, Bacău, Târgu-Mureş and Cluj. Concerning the crackdown in Timişoara, the investigation resulted in a trial and the conviction of certain high-ranking officials of the Communist regime (Chamber judgment *Şandru and Others v. Romania* of 8 December 2009). Concerning the crackdown in other cities, the investigation is still pending.

Relying in particular on Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment), the applicants complain that the competent authorities did not carry out an effective investigation into the death of their family members or into the ill-treatment to which the applicants themselves or their relatives were subjected during the crackdown. Under Article 6 § 1 (right to a fair hearing within a reasonable time), they complain about the length of the criminal proceedings concerning those events and the breach of their right to an effective remedy under Article 13, which would have enabled them to obtain the punishment of those responsible.

Ciorcan and Others v. Romania (nos. 29414/09 and 44841/09)

The applicants are 37 Romanian nationals of Roma origin born between 1937 and 1990. They all live in the Apalina neighbourhood in the town of Reghin (Romania). The case concerns an incident involving the police and the inhabitants of Apalina during which a large number of Roma were reportedly injured and/or shot.

On 7 September 2006 Augustin Biga, one of the applicants, and a friend were involved in a quarrel in a bar with a policeman. The policeman immediately filed a criminal complaint against the two men for insulting behaviour. An investigation was launched and, the same day, six local and regional police officers went to Apalina, the applicants' neighbourhood, to summon the two men before a prosecutor. They were accompanied by the local special forces, as the Chief of Regional Police anticipated difficulties and wanted to ensure their protection. According to the applicants, the special forces threw several tear gas grenades in order to disperse the crowd which had gathered

out of curiosity when the law enforcement had arrived. They claimed that the police officers then started shooting at the crowd. According to the Government, the police had had to use force due to the aggressiveness of the crowd, which had immediately surrounded and started to jostle the police on their arrival in the neighbourhood. Apparently, about a hundred Roma also attacked the special forces with bats, pitchforks, empty bottles and stones, and only partially retreated when the police fired rubber bullets into the crowd.

13 of the applicants have submitted medical certificates confirming the injuries they suffered during the incident. The certificates essentially attest to gunshot wounds (mostly caused by rubber bullets but some with no information about the type of bullet used), some requiring surgery.

A criminal investigation was immediately opened by the prosecuting authorities into attempted first-degree murder. All the police officers present during the incident, as well as 39 victims were interviewed. Laboratory tests were conducted and medical reports requested to determine the injuries sustained on both sides, and the scene of the clash was examined. In January 2007 the prosecuting authorities decided to terminate the investigation, with a decision not to bring charges against the officers involved in the incident as their intentions had clearly not been to kill but to discourage the large crowd. Ultimately, in November 2008 the domestic courts endorsed that conclusion, also finding that the law enforcement authorities had had no intention of committing any offence, the officers involved having acted in self-defence and in accordance with the standard procedures for such interventions. An investigation was also launched into abusive conduct of the special forces during the incident, but no charges were ever brought, and disciplinary proceedings were brought against the officer in charge of the regional police operations, who was found innocent.

The two summonses which justified the police operation in the applicants' neighbourhood were never served on the two suspects and the complaint against them for insulting behaviour was dismissed.

Relying on Article 2 (right to life), seven of the applicants – the sons and daughters of one of the inhabitants of Apalina who had been shot in the stomach during the incident – complain that their mother's life had been put in danger by the police's use of excessive force, alleging that their mother had been shot with live ammunition and that the national authorities' related investigation was inadequate. All but three of the applicants also complain under Article 3 (prohibition of inhuman or degrading treatment) that they had been the victims of serious bodily harm, which had put their lives in danger, and that the authorities' investigation into their allegations was ineffective. Lastly, relying on Article 14 (prohibition of discrimination) in conjunction with Articles 2 and 3, the applicants all complain that prejudice and hostile attitudes towards Roma played a decisive role in the police operation on 7 September 2006 – in particular the police's excessive use of force – and in the inadequacy of the authorities' ensuing investigations into the incident.

Papillo v. Switzerland (no. 43368/08)

The applicant, Francesco Papillo, is an Italian national who was born in 1980 and lives in Schlieren, Canton of Zürich (Switzerland). He is currently interned in the Zürich University clinic.

The case concerns the placement of the applicant, a criminal suffering from a mental illness.

In September 2005 Mr Papillo was found guilty of notably unemployment benefit fraud and drug - and weapons-related offences. The court ordered, on account of his lack of criminal responsibility, the dropping of some of the charges against him and his institutional placement. He was thus interned in the psychiatric clinic of Königsfelden, but as he refused treatment he was imprisoned. When a clinic in Rheinau offered to see him to discuss possible treatment, he refused to go there and was instead treated in prison. A medical report of 7 November 2006 recorded his state of health as "good and stable" and he was released on 9 January 2007 on the condition that he pursued his treatment. The Federal Court, in a judgment of 15 February 2008, observed that the treatment he

had received while in prison had brought about an improvement in his condition, permitting his release. The court thus ruled out any violation of Article 5 of the Convention and dismissed Mr Papillo's compensation claims.

Relying on Article 5 §§ 1 and 5 (right to liberty and security), Mr Papillo complains that he was held in a prison rather than in a clinic and that he has not been able to obtain redress for his allegedly unlawful deprivation of liberty.

Asiye Genç v. Turkey (no. 24109/07)

The applicant, Asiye Genç, is a Turkish national who was born in 1976 and lives in Burdur (Turkey).

The case concerns the death of her premature baby as a result of failure to provide hospital care.

On 31 March 2005 at about 11 p.m., Ms Genç gave birth by caesarean section to a boy (Tolga Genç) who was premature at 36 weeks[1], weighing 2.5 kg, and who shortly afterwards had breathing difficulties. As there was no suitable neonatal unit in the public hospital of Gümüşhane, the doctors decided to transfer the baby to another public hospital 110 km away, but it refused to admit him on the ground that there was no space in the neonatal intensive care unit. Around 2 a.m., Tolga was transferred to another hospital, where the duty doctor told Mr Genç that there were no incubators available and suggested that he return to the second hospital. As the baby's admission there was refused once again, he was to be taken to a third hospital. Around 3.30 a.m. Tolga died in the ambulance which he had apparently never left throughout the episode.

Mr and Mrs Genç filed a criminal complaint against some of the medical staff concerned and two investigations, one criminal and the other administrative, were opened. The first investigation was discontinued and the second was closed by a decision of the Supreme Administrative Court on 25 July 2007 on the ground that there was no case to answer. However, in the context of that investigation, serious breaches were identified in the manner with which the Tolga case had been dealt with, in particular a lack of coordination between the hospitals.

Relying on Article 2 (right to life), Mrs Genç complains in particular about alleged deficiencies in the investigation into her son's death. Under Article 3 (prohibition of inhuman or degrading treatment), she also complains about the circumstances in which he died. Lastly, under Article 13 (right to an effective remedy), she submits that she had no effective remedy in domestic law by which to have established the facts and responsibilities that led to the death.

Sayğı v. Turkey (no. 37715/11)

The applicant, Dursun Sayğı, is a Turkish national who was born in 1966 and lives in Şanlıurfa (Turkey). The case concerns her complaint that the national authorities failed to carry out an effective investigation into the disappearance of her husband, Mustafa Sayğı.

Ms Sayğı's husband has not been seen since 3 June 1994 when, travelling home on his motorbike, he was seen being stopped and apprehended by soldiers.

Mustafa Sayğı's mother complained to the authorities six days after the disappearance and, receiving no reply, then submitted a petition to the prosecuting authorities in March 2005. Between 2005 and 2006 a detailed investigation was carried out at the end of which the prosecutor concluded that Mustafa, last seen by a number of civilian eyewitnesses near the village of Yoğurtçu outside a disused public building being used by the military as a temporary base, had been unlawfully detained by soldiers. However, as the prescription period for false imprisonment was up, the prosecutor could not indict the military personnel responsible. The applicant lodged an objection but this was dismissed by the courts in November 2006.

[1]. Pregnancy is considered to reach its full term at 41.5 weeks.

In December 2009 a new investigation was launched when bones and the remains of a motorbike were dug up near Yoğurtçu village. In April 2010 the prosecuting authorities decided, however, to close the investigation on the basis that, following a forensic examination, the bones were not human but animal bones. The authorities also based their conclusions on a report prepared by the military denying that any enquiries had been made about Mustafa Sayğı's disappearance or that any military base had been set up in Yoğurtçu village in 1994. The applicant lodged an objection but this was dismissed by the courts in June 2010.

The applicant alleges that the authorities' investigation into her husband's disappearance was ineffective, especially in the light of the new evidence discovered in 2009. The complaint will be examined under Article 2 (right to life).

Vefa Serdar v. Turkey (no. 7309/04)

The applicant, Vefa Serdar, is a Turkish national who was born in 1969 and currently lives in Sivas (Turkey). The case concerns an injury inflicted on him during an anti-riot operation carried out by the police at the prison of Çanakkale.

In October 2000 a hunger strike was started in prisons to protest about a plan to introduce smaller cells for the inmates (new high-security "F-type" prisons"). The police intervened on 19 December 2000 in about twenty Turkish prisons and violent clashes ensued during the operation, codenamed "return to life".

Mr Serdar, injured by a tear-gas canister fired during the operation, was taken by ambulance to the emergency unit and underwent surgery. He was later transferred to a new prison.

Criminal proceedings concerning 154 inmates, including Mr Serdar, were opened in the spring of 2001, and also concerned 563 members of the police force. After an initial ruling by the Assize Court on 16 September 2008 the trial was opened before it in March 2013. The proceedings are still pending to date.

Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), Mr Serdar complains in particular about the use of force, which he alleges was disproportionate, and the ill-treatment inflicted during the anti-riot operation. He argues that the criminal proceedings brought in this matter against members of the police force had failed to meet the requirements of speed and fairness enshrined in Article 6 §§ 1 and 3 (b) (right to a fair hearing within a reasonable time / right to have adequate time and facilities for the preparation of one's defence), and that, in breach of Article 13 (right to an effective remedy), he had not had an effective remedy by which to submit his complaints. Under Article 6 §§ 1 and 3 (b), taken separately and together with Article 14 (prohibition of discrimination), Mr Serdar complains about the lack of fairness and the discriminatory nature of the criminal proceedings against him.

The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.

These rulings can be consulted from the day of their delivery on the Court's online database HUDOC.

They will not appear in the press release issued on that day.

Sikuta v. Hungary (no. 26127/11)
Atılgan and Others v. Turkey (nos. 14495/11, 14531/11, 26274/11, 78923/11, 8408/12, 11848/12, 12078/12, 12103/12, 14745/12, 21910/12, and 41087/12)
Gülay Coşkun v. Turkey (no. 22443/05)

Thursday 29 January 2015

Akhverdiyev v. Azerbaijan (no. 76254/11)

The applicant, Adalat Ali oglu Akhverdiyev, is an Azerbaijani national who was born in 1972 and lives in Baku. The case concerns his forced relocation and the demolition of his house for a new construction project.

Mr Akhverdiyev lived together with his wife, two small children and his elderly mother in a house in Baku, which had previously belonged to his parents and in respect of which he had obtained an ownership certificate in October 2005. According to his submission, he was approached in person by employees of a district authority in 2009 who demanded that he give up his house and accept in compensation an occupancy voucher for a new five-room flat under construction. He later learned that the neighbourhood where his house was located had been assigned, in 2004, for the construction of new houses as part of a larger development project by the Baku City Executive Authority. Mr Akhverdiyev initially refused to move out, but after demolition of the adjacent houses had started he and his family no longer found it possible to stay and left the house. His mother was later evicted and the authorities started demolishing the house in December 2009. Mr Akhverdiyev brought a civil case against the district authority requesting the restoration of his property to its previous condition or, if that was not possible, the payment of compensation for pecuniary and non-pecuniary damages. In November 2010 a district court rejected his claims. Following Mr Akhverdiyev's appeal, the appeal court essentially upheld the judgment but ordered that he be given two smaller flats instead of the single five-room flat. The appeal court's judgment was eventually upheld in July 2011.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), Mr Akhverdiyev complains that the interference with his property was unlawful and unjustified. He also relies on Article 6 § 1 (right to a fair hearing), Article 8 (right to respect for private and family life and the home) and Article 13 (right to an effective remedy).

Uzeyir Jafarov v. Azerbaijan (no. 54204/08)

The applicant, Uzeyir Eldar oglu Jafarov, is an Azerbaijani national who was born in 1963 and lives in Baku. The case concerns a violent physical attack on him which, he alleges, was related to his work as a journalist – having repeatedly criticised the Government's security and defence policies in his articles – and for which State officials were responsible.

On 20 April 2007, Mr Jafarov published an article in the newspaper for which he was working at the time, in which he criticised a colonel in the army, accusing him of corruption and illegal activities. On the same day Mr Jafarov attended a court hearing, during which the editor in chief of his newspaper was convicted of defamation. When Mr Jafarov left the newspaper office in the late evening of the same day, he was attacked by two men who hit him on the head and punched him. He subsequently had to be treated in hospital. Criminal proceedings were opened in connection with the attack, in the course of which Mr Jafarov identified one of his assailants, a police officer, in a video recording. In June 2007 the investigator issued a decision suspending the criminal proceedings, finding that it had not been possible to determine who was responsible for the attack. Mr Jafarov's complaints about the ineffectiveness of the investigation were rejected and his appeal against the decision to suspend the proceedings was eventually dismissed in January 2008.

Relying in substance on Article 3 (prohibition of inhuman or degrading treatment), Mr Jafarov complains that State officials were behind the attack on him and that the authorities failed to carry out an effective investigation into his ill-treatment. He also relies on Article 10 (freedom of expression), alleging that he was attacked because of his activity as a journalist.

Nikolić v. Croatia (no. 5096/12)

The applicant, Nada Nikolić, is a Croatian national who was born in 1964 and lives in Vukovar (Croatia). The case concerns the investigation into the death of her husband.

In October 1991, during the armed conflict in Croatia, Ms Nikolić's husband was apprehended by unknown armed men in uniforms in Vukovar, a town near the Serbian border which was at the time heavily attacked by the Yugoslav People's Army and paramilitary Serbian armed forces. His body was found in Serbia in November 1991; a subsequent autopsy found that the cause of death was a gunshot wound. In 2004 Ms Nikolić brought a civil action before the Croatian courts against the State, seeking damages in connection with the death of her husband. The police thus learned about that death for the first time, and a criminal investigation against unknown perpetrators on suspicion of a war crime against the civil population was opened. A number of witnesses were interviewed, but in November 2011 the police informed the State Attorney's office that they had not learned any new information. In the meantime, Ms Nikolić's civil claim was dismissed in September 2008, as the statutory limitation period had expired. The decision was upheld and her constitutional complaint was dismissed in July 2011.

Relying on Article 2 (right to life) and Article 13 (right to an effective remedy), Ms Nikolić complains that the investigation into the killing of her husband was deficient and that she had no effective remedy in that regard.

Klausecker v. Germany (no. 415/07)
Perez v. Germany (no. 15521/08)

Both cases concern complaints related to employment in international organisations and the alleged lack of access to the national courts in respect of those complaints.

The applicant in the first case, Roland Klausecker, is a German national who was born in 1973 and lives in Erlangen. The applicant in the second case, Amalia Perez, is a Spanish national, who was born in 1950 and lives in Madrid.

Mr Klausecker is physically handicapped after he lost one eye, one hand and part of the fingers of his other hand in an accident at the age of 18. He later graduated in mechanical engineering and then worked as a research assistant at a university. Having applied to work at the European Patent Office in Munich, and passed the necessary professional exams, he was refused employment as patent examiner there in 2005, as he was considered not to meet the physical requirements of the post. His internal appeal within the European Patent Office against that decision was rejected as inadmissible, as job applicants did not have standing to lodge such a complaint. As the European Patent Organisation (of which the European Patent Office is part) had immunity from jurisdiction of the German labour or civil courts, Mr Klausecker lodged a complaint directly with the Federal Constitutional Court, which was equally rejected, in June 2006, as inadmissible for lack of jurisdiction.

Ms Perez is a former staff member of the United Nations (UN). Having worked for the organisation since 1970, she was promoted several times and, in 1998, moved to the UN Volunteer Programme, based in Bonn, Germany. After her professional performance had previously been rated by consecutive supervisors as fully satisfactory or exceptional, she was included in a reassignment scheme in 2002 after three negative appraisal reports. As she was subsequently unable to find a new post within the organisation, she was dismissed in 2003. Her internal administrative complaints as well as her appeal to the UN Joint Appeals Board and the UN Administrative Tribunal were unsuccessful.

Both applicants rely on Article 6 (right to a fair trial), essentially complaining about the lack of access to the German courts to challenge their refusal of employment and dismissal, respectively. Mr Klausecker also complains, in particular, of the lack of access to and the deficient procedures within

the European Patent Office, for which he considers Germany is to be held responsible. Ms Perez also alleges that the UN internal appeal proceedings did not meet the requirements of a fair trial by an independent and impartial tribunal and that Germany is to be held responsible for that.

Sik v. Greece (no. 28157/09)

The applicants, Mr Alexandros Sik and Ms Eleni Sik, are Greek nationals who were born in 1945 and live in Athens. The case concerns the inadmissibility of an appeal they had lodged on points of law.

In 2000 and 2001 judgments were delivered against the applicants in their absence for failure to pay their social security contributions within the allotted time. After their appeals were dismissed as out of time by the Court of Appeal, they lodged appeals with the Court of Cassation on 25 January 2008. Those appeals were declared inadmissible on the ground that a specific document required (supplementary to the main notice of appeal) had not been signed by the Registry official who received it.

The applicants, relying on Article 6 § 1 (right of access to a court), complain that the finding by the Court of Cassation that their appeals on points of law were inadmissible constitutes a denial of access to that court.

Stolyarova v. Russia (no. 15711/13)

The applicant, Irina Stolyarova, is a Russian national who was born in 1962 and lives in Moscow. The case concerns her complaint of having been dispossessed of her flat.

Ms Stolyarova bought a flat in Moscow in March 2005 from a seller, S., who had acquired it under the privatisation scheme in 2004. The flat had previously been owned by the city of Moscow and had been used for social housing. In 2009 the Moscow Housing Department brought proceedings against Ms Stolyarova, as well as against S. and two of his family members, asking the courts to declare null and void the sale of the flat and several previous transactions including the privatisation in favour of S. The Housing Department also sought Ms Stolyarova's eviction. By two decisions, of December 2010 and March 2011, a district court granted the claim by the Housing Department and dismissed Ms Stolyarova's counterclaim seeking to have her title to the flat recognised. The decisions were eventually upheld in 2012. The courts found in particular that, at the time Ms Stolyarova bought the flat, she ought to have been aware of a ban that had been imposed on it by the criminal investigations service of the Moscow Department of the Interior. Ms Stolyarova's request to have her eviction suspended was dismissed.

Ms Stolyarova complains that she was deprived of her possessions, in violation of Article 1 of Protocol No. 1 (protection of property), and that her imminent eviction is in breach of Article 8 (right to respect for private and family life and the home). She also relies on Article 6 § 1 (right to a fair hearing), complaining that the proceedings before the national courts were unfair.

A.N. v. Ukraine (no. 13837/09)

The applicant, Mr A.N., is a Ukrainian national who was born in 1980 and is currently serving a 12-year prison sentence for murder. The case concerns his complaint of having been tortured by police officers in order to make him confess to the crime.

According to A.N., he was apprehended by police officers on 12 December 2004, who then interrogated and tortured him – in particular with electric shocks – in order to make him confess to a murder which had happened a few weeks earlier in the Donetsk region. During the pre-trial investigation he made some self-incriminating statements, which he later retracted. Those statements, made in the presence of lawyer, nevertheless served as evidence for his conviction in October 2007, which was eventually upheld in August 2008. In parallel, following his placement in pre-trial detention, A.N.'s mother lodged a complaint with the prosecutor in January 2005, alleging that police officers had tortured her son to make him confess. Following a number of examinations,

the prosecutor issued a decision refusing to open a criminal investigation into the alleged ill-treatment.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), A.N. complains that he was tortured by the police and that there was no effective investigation in that regard; he also complains that he was not provided with appropriate medical treatment in detention. He further relies on Article 6 § 1 (right to a fair trial), complaining that the courts convicted him on the basis of his self-incriminating statements obtained through ill-treatment.

A.V. v. Ukraine (no. 65032/09)

The applicant, Mr A.V., is a Ukrainian national who was born in 1982 and lives in Kyiv. The case concerns his complaint of having been ill-treated by the police and of having been unfairly convicted.

A.V. was found guilty of illegally purchasing and storing drugs in large quantities and sentenced to three years' imprisonment, suspended, in July 2008, the conviction eventually being upheld in May 2009. He maintains that, when arrested in December 2006, he was beaten up by police officers who planted small bags of cocaine on him and threatened to sexually abuse him. During his subsequent administrative detention he wrote a confession, which he alleges he was forced to make, admitting that he had unlawfully bought the cocaine for personal use.

Relying on Article 3 (prohibition of inhuman or degrading treatment), A.V. complains that he was pressured and beaten up by the police officers, and that he was held in inappropriate conditions in administrative detention between 29 December 2006 and 5 January 2007. Further relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), he complains that he did not have access to a lawyer at the initial stage of the proceedings and that the courts convicted him on the basis of self-incriminating statements obtained through ill-treatment.

Malyk v. Ukraine (no. 37198/10)

The applicant, Volodymir Malyk, is a Ukrainian national who was born in 1972 and lives in Zhytomyr (Ukraine). The case concerns his arrest and detention in connection with a criminal investigation into embezzlement and forgery by the manager and owners of a company of which Mr Malyk was the director.

On 27 November 2009 Mr Malyk was arrested for his suspected involvement in arranging loan agreements for his company, using the signature of shareholders on the loan documents without their consent. The investigator released Mr Malyk on 7 December 2009 after finding no information to suspect that he would abscond or hinder the investigation. The day after his arrest, Mr Malyk challenged the lawfulness of his arrest and detention before the domestic courts, complaining that no eyewitnesses had identified him as a person who had committed the alleged crimes. His complaint was dismissed in March 2010, the courts finding that there were witness statements available in the file. This decision was later upheld on appeal and Mr Malyk's subsequent appeal on points of law was rejected as inadmissible in May 2010.

Relying on Article 5 § 1 (c) (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), Mr Malyk complains that his arrest and detention were unlawful and that he had not been able to obtain an effective judicial review of his complaint in this respect.

Yevgeniy Petrenko v. Ukraine (no. 55749/08)

The applicant, Yevgeniy Petrenko, is a Ukrainian national who was born in 1988 and is currently serving a prison sentence for murder. The case concerns his allegations of police ill-treatment.

On 28 November 2007 Mr Petrenko was found guilty of murdering an adolescent in 2004 and sentenced to 14 years' imprisonment. The Supreme Court upheld this judgment in May 2008, finding

that Mr Petrenko's guilt had been well-established by the evidence against him, including self-incriminating statements he had made during the pre-trial investigation. It dismissed as groundless his allegations that the confession had been obtained following psychological pressure and physical ill-treatment by the police.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Petrenko alleges that he had confessed to the murder under police duress when being questioned in March 2004 by the police as a witness in the criminal investigation. He also complains that the authorities failed to carry out an effective investigation into his allegations of ill-treatment. Further relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), he also complains that he was not provided with access to a lawyer in the initial period of the criminal proceedings against him and that his conviction, based on self-incriminating statements made under duress, was unfair.

Aswat v. the United Kingdom (no. 62176/14)

The applicant, Haroon Aswat, is a British national who was born in 1974 and is detained pending trial in the United States of America. The case concerns Mr Aswat's complaint about the inadequacy of the assurances provided by the US Government with regard to his extradition from the United Kingdom to the US.

Mr Aswat has brought two applications to the European Court of Human Rights.

As concerned the first application, the ECHR held in a judgment of 16 April 2013 (Aswat v. the United Kingdom, no. 17299/12) that Mr Aswat's extradition to the US would be in violation of Article 3 (prohibition of inhuman and degrading treatment), but that it was solely on account of the severity of his mental illness and not as a result of the length of his possible detention there. The Court further decided to continue to indicate to the UK Government under Rule 39 of its Rules of Court (interim measures) not to extradite Mr Aswat until the judgment became final or until further order. The UK Government's request for that judgment to be referred to the Grand Chamber was refused on 11 September 2013. The Court's decision therefore became final and the Rule 39 measure previously in place lapsed.

Mr Aswat brought his second application (no. 62176/14), which included a further Rule 39 request to prevent his extradition to the USA, to the ECHR on 15 September 2014. On 16 September 2014 a decision was made to apply Rule 39 until a Chamber of judges had been given the opportunity to consider the request made. On 23 September 2014 the Chamber, having considered the case (notably the assurances provided by the US Government), lifted the Rule 39 measure. Mr Aswat was subsequently extradited to the US on 21 October 2014.

Mr Aswat submitted that the assurances provided by the US Government do not respond to the risks identified by the ECHR in its judgment of April 2013 and that therefore his extradition would be in breach of Article 3 (prohibition of inhuman or degrading treatment).

The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.

These rulings can be consulted from the day of their delivery on the Court's online database HUDOC.

They will not appear in the press release issued on that day.

Brillet v. Belgium (nos. 14942/11 and 17942/11)
Rukavina v. Croatia (no. 770/12)
Kayiplar and Others v. Cyprus (no. 42153/14)
Heinanen v. Finland (no. 947/13)
VP-Kuljetus Oy and Others v. Finland (no. 15396/12)
Perez v. Germany (no. 15521/08)
Weber v. Germany (no. 70287/11)

Diosi v. Hungary (no. 58947/11)
Faller v. Hungary (no. 64901/11)
Kovacs v. Hungary (no. 29672/13)
Calcagno v. Italy (no. 28319/04)
De Ciantis v. Italy (no. 39386/10)
Frisoli and Others v. Italy (no. 33172/05)
Tota v. Italy (no. 36933/04)
Mazetis v. Lithuania (no. 19644/08)
B.J. and S.J. v. Poland (no. 52520/12)
Brzoska v. Poland (no. 33791/14)
Czakanski v. Poland (no. 18575/12)
Holowinski v. Poland (no. 48794/11)
Jolkiewicz v. Poland (no. 14426/13)
Los v. Poland (no. 66115/13)
Ghiurau v. Romania (no. 3620/04)
Vlas and Others v. Romania (no. 30541/12)
Kekic v. Slovenia (no. 25539/14)
O.P. v. Slovenia (no. 19617/09)
Balsells i Castelltort and Others v. Spain (no. 62239/10)
Johansson v. Sweden (no. 68996/13)
Segalat v. Switzerland (no. 10122/14)
Aras v. Turkey (no. 28352/07)
Aslan v. Turkey (no. 1047/07)
Aslanoglu v. Turkey (no. 50294/09)
Kadriye Ceylan v. Turkey (no. 22261/10)
Kenar v. Turkey (no. 23587/08)
Selek v. Turkey (no. 33639/10)
Sisman Dis Ticaret A.S. and Camadan v. Turkey (no. 23247/07)
Suvagci v. Turkey (no. 5005/08)
Timurhan v. Turkey (no. 28882/07)
Yaban v. Turkey (no. 24886/07)
Yigit and Others v. Turkey (no. 24032/09 and 21 other applications)
Yoyler and Others v. Turkey (no. 10783/07 and 46 other applications)

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)