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

Press Release
issued by the Registrar of the Court

ECHR 026 (2015)
27.01.2015

Judgments of 27 January 2015

The European Court of Human Rights has today notified in writing 17 judgments:

- 11 Chamber judgments[1] are summarised below; and for three others separate press releases have been issued: *Neshkov and Others v. Bulgaria (applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12, and 9717/13), Paradiso and Campanelli v. Italy (no. 25358/12), and Asiye Genç v. Turkey (no. 24109/07)*

-three Committee judgments[2], which concern issues which have already been submitted to the Court, can be consulted on HUDOC and do not appear in this press release.

The judgments in French below are indicated with an asterisk (*).

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

The applicant, Toni Kostadinov, is a Bulgarian national who was born in 1960 and lives in Vratsa (Bulgaria). The case concerned 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) of the European Convention on Human Rights, Mr Kostadinov alleged that he had been arrested without there being sufficient information to suspect him of a criminal offence, that he had been detained for more than six months, that he had not been able to dispute the lawfulness or necessity of his detention and that he had not had the possibility of obtaining redress for the damage sustained. He further complained that the remarks made at the press conference had breached his right to be presumed innocent under Article 6 § 2 of the Convention.

No violation of Article 5 § 1
No violation of Article 5 § 3
No violation of Article 5 § 4
No violation of Article 5 § 5
Violation of Article 6 § 2

Just satisfaction: 3,600 euros (EUR) (non-pecuniary damage) and EUR 1,500 (costs and expenses)

[1] Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

[2] Under Article 28 of the Convention, judgments delivered by a Committee are final.

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

Violation of Article 6 § 1
Violation of Article 13

Just satisfaction: EUR 2,400 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

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 concerned 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 complained 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 amounted to double jeopardy.

Violation of Article 4 of Protocol No. 7

Just satisfaction: EUR 3,000 (non-pecuniary damage) and EUR 7,000 (costs and expenses)

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 complained that he had been 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 alleged that the fine against him had breached his right to express himself in his capacity as an attorney. Further relying on Article 6 § 1 (right to a fair trial within a reasonable time), he complained about the excessive length of the judicial review to contest the disciplinary proceedings against him and the fine.

Violation of Article 6 § 1
No violation of Article 10

Just satisfaction: EUR 1,500 (non-pecuniary damage)

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. Today's judgment concerned the question of the application of Article 41 (just satisfaction) of the Convention.

Just satisfaction: EUR 70,000 (pecuniary damage), and EUR 10,000 (costs and expenses)

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. Today's judgment concerned the question of the application of Article 41 (just satisfaction) of the Convention.

Just satisfaction: Taking note of the friendly settlement reached between the parties, whereby the Lithuanian Government undertakes to pay the applicant EUR 9,706 in respect of pecuniary and non-pecuniary damage and costs and expenses, the Court decided to strike the application out of its list of cases as regards the Article 41 procedure.

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 complained that the competent authorities had not carried out

an effective investigation into the death of their family members or into the ill-treatment to which the applicants themselves or their relatives had been subjected during the crackdown.

Violation of Article 2 (investigation)
Violation of Article 3 (investigation)

Just satisfaction: Between EUR 7,500 and EUR 15,000 to each applicant in respect of non-pecuniary damage, and EUR 1,500 EUR jointly to Cristian George Surdu, Claudia Elena Opriş and Valeria Jurcă in respect of costs and expenses.

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 concerned an incident involving the police and the inhabitants of Apalina during which a large number of Roma had reportedly been 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 – complained 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 had been inadequate. All but three of the applicants also complained 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 had been ineffective. Lastly, relying on Article 14 (prohibition of discrimination) in conjunction with Articles 2 and 3, the applicants all complained that prejudice and hostile attitudes towards Roma had 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.

Violation of Article 2 (right to life + investigation) – in respect of Sonia Biga, Augustin Biga, Carol Ciorcan, Sorin Ciorcan, Costel Ciorcan, Edith Csiki (Biga) and Ildiko Kalanyos (Biga)
No violation of Article 3 (treatment)
Violation of Article 3 (investigation) – in respect of Ştefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Costel Ciorcan, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Ildiko Kalanyos (Biga), Susana Kalanyos, Traian Kovacs, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr
Violation of Article 14 taken in conjunction with Articles 2 and 3 (investigation) – in respect of Sonia Biga, Augustin Biga, Carol Ciorcan, Sorin Ciorcan, Costel Ciorcan, Edith Csiki (Biga), Ildiko Kalanyos (Biga), Ştefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Susana Kalanyos, Traian Kovacs, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr

Just satisfaction: EUR 42,000 jointly to Sonia Biga, Augustin Biga, Carol Ciorcan, Costel Ciorcan, Sorin Ciorcan, Edith Csiki (Biga) and Ildiko Kalanyos (Biga), and EUR 7,500 each to Ştefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Costel Ciorcan, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Ildiko Kalanyos (Biga), Susana Kalanyos, Traian Kovacs, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr in respect of non-pecuniary damage

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 concerned 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 in particular on Article 5 § 1 (right to liberty and security), Mr Papillo notably complained that he had been held in a prison rather than in a clinic.

No violation of Article 5 § 1 – as regards the complaint concerning the period between 30 March 2006 and 25 January 2007

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 concerned her complaint that the national authorities had failed to carry out an effective investigation into the disappearance of her husband, Mustafa Sayğı.

Ms Sayğı's husband had not been seen since 3 June 1994 when, travelling home on his motorbike, he had been 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.

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

Violation of Article 2 (investigation)

Just satisfaction: EUR 20,000 (non-pecuniary damage)

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 concerned 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 in particular on Article 2 (right to life), Mr Serdar complained about the use of force, which he alleged had been disproportionate.

No violation of Article 2 (right to life)
Violation of Article 2 (investigation)

Just satisfaction: EUR 8,000 (non-pecuniary damage) and EUR 7,500 (costs and expenses)

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)