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

Press Release
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Judgments of 3 February 2015

The European Court of Human Rights has today notified in writing ten judgments[1]:

- five Chamber judgments and two Committee judgments (in italics) are summarised below; and for two other Chamber judgments separate press releases have been issued: *Apostu v. Romania (no. 22765/12)* and *Hutchinson v. the United Kingdom (no. 57592/08)*

-one Committee judgment, which concerns issues which have already been submitted to the Court, can be consulted on HUDOC and does not appear in this press release.

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

Smits and Others v. Belgium (applications nos. 49484/11, 53703/11, 4710/12, 15969/12, 49863/12, and 70761/12)*
Vander Velde and Soussi v. Belgium and the Netherlands (nos. 49861/12 and 49870/12)*

The applicants are offenders who were found not to be criminally responsible for their actions and whose psychiatric detention was ordered in the interests of public safety and of their own treatment. These cases concerned the issue of the detention of offenders suffering from mental disorders in the psychiatric wings of ordinary prisons.

Relying in particular on Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, the applicants alleged that they had been detained in conditions unsuited to their state of mental health and that the reasonable time-limit for placing them in an appropriate institution had been exceeded. Relying notably on Article 5 § 4 (right to speedy review of the lawfulness of detention) of the European Convention, they argued that they had not had an effective remedy in respect of their complaint concerning the inappropriate nature of their place of detention.

Violation of Article 5 § 1 by Belgium – in both cases (in the case of *Vander Velde and Soussi*, the Court declared inadmissible the complaints in respect of the Netherlands)
Violation of Article 5 § 4 – in the case of *Smits and Others*

Just satisfaction: 15,000 euros (EUR) (non-pecuniary damage) to each applicant

Ilieva and Others v. Bulgaria (no. 17705/05)

The case concerned the restitution of agricultural land.

The applicants, Stanka Ilieva, Stanko Stanev, Kalin Iliev and Stanko Iliev, are Bulgarian nationals who were born in 1928, 1949, 1958 and 1954 respectively. Stanko Stanev and Kalin Iliev live in Teteven

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

and Stanko Iliev lives in Pleven (both in Bulgaria). Stanka Ilieva, who died in 2012, also lived in Teteven.

Following the entry into force of a law on the ownership and use of farmland, the applicants filed a claim in 1991 for restitution of agricultural land owned by their ancestors in the area of Ribaritsa, the Lovech region, which was collectivised after 1945. In the ensuing restitution proceedings the district court restored the applicants' property rights to the plot of land in question by way of a final judgment of 9 April 1998. The court found in particular that the land continued to be formally allocated as agricultural (a proposal to expropriate it having been rejected in 1985) and that the plot had not been registered as State- or municipally-owned.

Before the applicants made these restitution claims, the company "Pochivno delo na SSHP" EOOD, which was entirely State-owned, had been using and managing a hotel constructed in the 1960s on the plot of land claimed by the applicants. In August 1998 the company thus brought civil proceedings seeking ownership of the land. The Supreme Court of Cassation subsequently held in a final judgment of January 2005 that the company had become the owner of the plot of land, that the hotel on the land represented a "complex of construction works", which already existed at the time the law on farmland entered into force in 1991, and that all this meant that the restitution of the plot in kind was not permitted by law. As a result, the applicants were granted compensation in lieu of restitution in 2006.

Relying on Article 6 § 1 (right to a fair trial), the applicants complained that in the civil proceedings against "Pochivno delo na SSHP" EOOD the national courts had re-examined the final judgment in their favour of April 1998 and that this approach had breached the principle of legal certainty. Also relying on Article 1 of Protocol No. 1 (protection of property), they complained about their inability to obtain restitution of their land in kind, alleging that the compensation they had received instead had been inadequate and that the restitution process itself had lasted too long and had left them in a prolonged situation of uncertainty.

No violation of Article 6 § 1
Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 2,000 to Stanko Stanev and EUR 1,000 each to Kalin Iliev and Stanko Iliev (non-pecuniary damage), and EUR 1,000 to the applicants jointly (costs and expenses)

Just Satisfaction

Nedelcheva and Others v. Bulgaria (no. 5516/05)

The applicants, Kera Nedelcheva, Geno Dzhingov, Minka Halvadzhieva, Frosina Gineva, Magda Despotova, Raycho Kostov, Ginka Georgieva and Todorka Dimitrova, are eight Bulgarian nationals who were born between 1918 and 1948 and live in Burgas (a port city on the Black Sea) and Sozopol (a resort on the Black Sea) (both in Bulgaria).

The applicants complained that the authorities had refused to restore to them land expropriated from their ancestors after 1945 and on which the State-owned seaside resort "Duni" had subsequently been constructed.

In its principal judgment of 28 May 2013 the Court held that there had been two violations of Article 1 of Protocol No. 1 (protection of property), finding in particular that the Bulgarian authorities had failed to enforce a final court judgment of 4 January 2008 in which the applicants had been awarded compensation in lieu of restitution of the land in the Duni seaside resort and that they had been responsible for lengthy delays in the restitution process.

Under Article 41 (just satisfaction) the Court awarded the eight applicants EUR 12,000, to be divided in accordance with their inheritance shares, for damage related to the delays in the restitution process, and EUR 3,324 to the applicants, jointly, for costs and expenses. The Court also held that

the question of the application of Article 41 with regards the claim arising from the authorities' failure to enforce the court judgments was not ready for decision and reserved it for examination at a later date. Today's judgment concerns this question.

Just satisfaction: EUR 20,050 to the applicants jointly (pecuniary damage), and EUR 544 jointly (costs and expenses)

Andrişcă v. Romania (no. 65804/09)*

The applicant, Viorel Andrişcă, is a Romanian national who was born in 1957 and lives in Popeşti. The case concerned allegations of misconduct by police officers who had intervened at the scene of a fight.

On the evening of 14 August 2007 Mr Andrişcă, who is retired, was sitting on a restaurant terrace with three friends. A dispute arose between one of them, S.I., and two waitresses. The management of the restaurant summoned the police, who proceeded to arrest S.I. by force and place him in handcuffs. The three remaining members of the group were taken to the police station. One of them resisted, while Mr Andrişcă and the third person agreed to accompany the police to their car.

The parties differ in their account of what happened when the applicant was getting into the car. Mr Andrişcă stated that, after complaining that the applicant was walking too slowly, one of the police officers forced him to lower his head and twisted his arm behind his back. He claimed also to have been punched in the head and neck and kicked in the abdomen. A report drawn up following the forensic medical examination carried out on Mr Andrişcă stated that he was suffering from "injuries to the larynx; bruising of the larynx, acute respiratory difficulties, imminent asphyxia and dysphonia". It further found that Mr Andrişcă had post-traumatic injuries caused by contact with hard objects and by blows.

Mr Andrişcă lodged a criminal complaint with the public prosecutor's office against two police officers, accusing them of misconduct. The officers denied assaulting him. On 29 January 2009 the District Court acquitted the two police officers on the ground that they had not committed the acts with which they were charged. Both the public prosecutor and Mr Andrişcă appealed against the judgment. The High Court of Cassation and Justice dismissed the appeals and upheld the first-instance judgment finding that the accused had not committed the acts with which they were charged.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Andrişcă alleged that he had been ill-treated by the police officers during his arrest and that no effective investigation had been carried out into his allegations of ill-treatment.

Violation of Article 3 (ill-treatment + investigation)

Just satisfaction: EUR 11,700 (non-pecuniary damage)

Pruteanu v. Romania (no. 30181/05)*

The applicant, Alexandru Pruteanu, is a Romanian national who was born in 1974 and lives in Bacău. He is a lawyer. The case concerned the interception of his telephone conversations and his inability to challenge the lawfulness of the measure and to request that the recordings be destroyed.

On 1 September 2004 the commercial company M. was barred from carrying out bank transactions. The police received several criminal complaints against the company for deceit. One of the company's partners, C.I., instructed the applicant as his defence lawyer.

On 24 September 2004 the District Court authorised the prosecuting authorities to intercept and record the partners' telephone conversations for a period of thirty days. From 27 September to

27 October 2004 the fraud investigation unit intercepted and recorded C.I.'s conversations, including twelve conversations with the applicant. On 21 March 2005 the District Court held that the recordings were relevant to the criminal case against C.I.'s fellow partners in company M., and ordered that the transcripts and the tapes be placed under seal. Mr Pruteanu and C.I. both lodged appeals, which were declared inadmissible.

Relying in particular on Article 8 (right to respect for private and family life), Mr Pruteanu complained of interference with his right to respect for his private life and correspondence on account of the recording of his telephone conversations with his client C.I.

Violation of Article 8

Just satisfaction: EUR 4,500 (non-pecuniary damage) and EUR 50 (costs and expenses)

Bayar and Gürbüz v. Turkey (no. 2) (no. 33037/07)*

The applicants, Ali Gürbüz and Hasan Bayar, are two Turkish nationals who were born in 1971 and 1982 and live in Cologne (Germany) and Bern (Switzerland). They are the owner and editor respectively of the daily newspaper *Ülkede Özgür Gündem*, which has its registered office in Istanbul (Turkey). The case concerned the fine imposed on them for publishing a statement by an illegal armed organisation.

On 24 March 2004 the newspaper published an article containing statements made by Mr Aydar, chair of a branch of the illegal armed organisation the PKK. The public prosecutor charged Mr Gürbüz and Mr Bayar with publishing a statement by an illegal armed organisation, an offence punishable under the Prevention of Terrorism Act.

On 30 March 2004 the Assize Court ordered each of the applicants to pay a fine of 445,616,000 former Turkish liras (TRL), approximately 247 euros (EUR). Mr Gürbüz and Mr Bayar appealed on points of law. The case was remitted to the Assize Court, which ordered each of the applicants to pay a slightly lower fine of 440 Turkish liras (TRY), equivalent to approximately EUR 233. The applicants again sought leave to appeal on points of law, but their application was rejected on the ground that where the amount of the fine did not exceed TRY 2,000 the judgment was final. On 24 February 2010 the Assize Court, re-examining the case following a judgment of the Constitutional Court of 26 November 2009 which deleted the reference to "owners" in a provision of the Act, stayed execution of Mr Gürbüz's sentence.

Relying on Article 10 (freedom of expression), the applicants alleged that their conviction had infringed their right to freedom of expression. Relying in particular on Article 6 § 1 (right to a fair trial), they notably maintained that they had had no domestic remedy by which to complain of having been prevented from lodging an appeal on points of law.

Violation of Article 10
Violation of Article 6 § 1 – on account of the fact that the applicants had been prevented from lodging an appeal on points of law

Just satisfaction: EUR 233 to Mr Bayar (pecuniary damage), EUR 1,300 each to Mr Bayar and Mr Gürbüz (non-pecuniary damage), and EUR 500 to the applicants jointly (costs and expenses)

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.