



## Judgments of 3 March 2015

The European Court of Human Rights has today notified in writing ten judgments<sup>1</sup>:

seven Chamber judgments are summarised below; and for *S.Z. v. Bulgaria* (application no. 29263/12), a separate press releases has been issued;

one Chamber judgment and one Committee judgment, 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 (\*)*.

### Dimitrovi v. Bulgaria (application no. 12655/09)

The applicants, Angelina Dimitrova and Konstantin Dimitrov, mother and son, are Bulgarian nationals who were born in 1973 and 2004 respectively and live in Sofia. Their case concerned the seizure of some of their assets by the state.

Angelina Dimitrova and Konstantin Dimitrov are the widow and the son of Konstantin Dimitrov who died in 2003. In 2001 the Sofia regional public prosecutor opened a first set of proceedings against Ms Dimitrova and her husband under Chapter 3 of the Citizen's Property Act. Chapter 3 of this act covered the "forfeiture of unlawful or non-work related income received by citizens". Although most of the act was repealed in 1990, Chapter 3 remained in force until 2005. The investigation examined the couple's income between 1990 and 2001, but in 2002 the prosecutor decided to discontinue proceedings. At a later date the Sofia regional public prosecutor decided to open new proceedings, once more looking at their income over the same period. In 2004 the prosecutor brought a case against Ms Dimitrova and her son under Chapter 3 of the Citizen's Property Act, demanding the forfeiture of two flats, an office, some land, a holiday house and a car. Following an appeal, the State seized the flats, the office and the land in 2010 and obliged Ms Dimitrova and her son to pay the State the equivalent value of the holiday house and the car which had been transferred to other people during the course of the proceedings.

Relying in particular on Article 1 (protection of property) of Protocol No. 1 to the European Convention on Human Rights, Ms Dimitrova and her son argued that the forfeiture of their properties had been unfair, alleging that the relevant law was flawed both in principle and in the way it had been applied in their case. Notably, the law provided for no time limits, meaning that the forfeiture proceedings could be opened, closed and reopened at any point, and placed a disproportionate burden on the defendants, there being no reliable method of calculating income and expenditure over a lengthy period of time which, in their case, had been marked by economic transition and galloping inflation. They also argued that the law served no particular purpose as cases related to tax evasion or criminal behaviour were specifically excluded; indeed, the applicants alleged that they had never been charged with, prosecuted for or convicted of a criminal offence.

### Violation of Article 1 of Protocol No. 1

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

**Just satisfaction:** The Court reserved for subsequent decision the question of the application of Article 41 (just satisfaction) of the Convention as far as pecuniary damage is concerned. It awarded the applicants, jointly, 3,000 euros (EUR) (non-pecuniary damage) and EUR 12,150 (costs and expenses).

### Pisaroglu v. the Republic of Moldova (no. 21061/11)

The applicant, Natalia Pisaroglu, is a Moldovan national who was born in 1987 and lives in Chişinău. Her case concerned poor conditions in the prison where she is detained.

Ms Pisaroglu was arrested in 2010, charged with trafficking in human beings and detained on remand. She was still detained at Prison 13 in Chişinău in mid-2014. She complained that the prison cells were overcrowded, dirty and cold with no access to daylight or fresh air, no bedding, poor quality food and showers only once a week.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, Ms Pisaroglu argued that the conditions of her detention on remand in Prison no. 13 were inhuman and degrading.

#### Violation of Article 3

**Just satisfaction:** EUR 3,000 (non-pecuniary damage) and EUR 207 (costs and expenses)

### M.C. v. Poland (no. 23692/09)

The applicant, Mr M.C., is a Polish national who was born in 1987 and currently lives in Skierniewice (Poland). His case concerned his allegation that he had been subjected to ill treatment by his fellow inmates whilst in prison and that there had been no effective investigation of his complaint.

Mr M.C. was remanded in custody in 2007 following his arrest on suspicion of robbery. He was later charged with sexual abuse of a minor and in 2008 he was sentenced to seven years in prison. He complains that he was abused by two fellow inmates over a weekend in 2007 whilst in the psychiatric wing of the Warsaw-Mokotów Remand Centre. He claims that the inmates' abuse included attempting to rape him with a broom, pouring cold water over him, spitting on him and scrubbing his head with a toilet brush. He says that he attempted to alert staff over the weekend but to no avail. He reported the incident to a doctor on the Monday morning and was quickly moved to a different cell. An internal investigation made light of the incident, with the prison authorities accepting the claim by the alleged perpetrators that they had merely been teasing him. They were deprived of their privileges to use the remand centre shop for one month and three months respectively. The internal investigation found no shortcomings in the behaviour of the guards or medical staff on duty over the weekend.

Unsatisfied with this outcome, Mr M.C. filed criminal complaints against the alleged perpetrators and the prison officials. He also pursued a private prosecution; however this was subsequently discontinued on the expiry of the limitation period. The alleged perpetrators were initially charged in the criminal case, but the prosecutor eventually dropped the case in 2012, arguing that they could not be tried twice for the same offence and that there had already been a private prosecution. The prosecutor found that no criminal offence had been committed by the prison staff. In 2009 Mr M.C brought a civil case against the two alleged perpetrators and the State. The Warsaw Regional Court agreed that his rights had been infringed and he was awarded compensation payments from the State and one of the alleged abusers; Mr M.C settled with the other alleged abuser who agreed to make a payment to him.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr M.C. complained that he had been physically and psychologically ill-treated by his fellow inmates in the remand centre and

that the prison administration had failed to ensure his safety. He also complained that, despite his fellow inmates partially admitting what they had done and being disciplined by the prison authorities, the prosecutor had decided to discontinue the investigation.

**Violation of Article 3** (substantive aspect), with regard to the events between 7 and 10 September 2007, as regards the State's failure to fulfill its obligation to protect Mr M.C.

**Violation of Article 3** (investigation) with regard to the events between 7 and 10 September 2007

**Just satisfaction:** EUR 14,250 (non-pecuniary damage) and EUR 180 (costs and expenses)

### Radovancovici v. Romania (no. 45358/13)

The applicant, Omer Radovancovici, is a Romanian national who was born in 1965.

He was sentenced to five years' imprisonment for smuggling and criminal conspiracy in February 2013 and is currently serving his sentence in Timișoara Prison (Romania).

Mr Radovancovici complained of his conditions of detention, and in particular sharing a 20 m<sup>2</sup> cell with 17 other inmates. He relied on Article 3 (prohibition of inhuman or degrading treatment).

**Violation of Article 3** – on account of prison overcrowding

**Just satisfaction:** Mr Radovancovici did not submit a claim for just satisfaction within the time-limit fixed by the Court.

### S.C. Asul de Aur – Aranyaszok S.R.L. and Fodor Barabas v. Romania (no. 35720/06)

The first applicant, Alimentație Publică "Asul de Aur – Aranyaszok", was a commercial company incorporated under Romanian law having its registered office in Sfântu Gheorghe (Romania). It was set up in 1991 and removed from the commercial register in 2009. Its main activity had been food distribution. The second applicant, Magdolna Barabas, who is a Romanian national, was the sole shareholder and administrator.

The case concerned the court-ordered liquidation of the applicant company following proceedings that the applicants considered to be unfair.

In July 2004, when it became insolvent, the applicant company requested the institution of judicial reorganisation proceedings. At the request of Ms Barabas, the insolvency judge appointed C. company as judicial administrator.

On 27 June 2005 the insolvency judge formally noted the opposition expressed by the majority of the creditors to the proposed recovery scheme and ordered liquidation proceedings. On appeal by the applicants, the case was referred to the County Court, which allocated it to the same insolvency judge. An application by Ms Barabas to the court challenging the insolvency judge and requesting the replacement of the judicial administrator was rejected. As the majority of the creditors again opposed the new recovery scheme, the insolvency judge ordered a second liquidation procedure. Appeals by the applicants were unsuccessful.

Relying in particular on Article 6 § 1 (right to a fair trial / right of access to a court), the applicants alleged a lack of impartiality on the part of the insolvency judge and complained of a failure to examine their request for replacement of the judicial administrator.

**No violation of Article 6 § 1**

## Sandu Voicu v. Romania (no. 45720/11)

The applicant, Sandu Voicu, is a Romanian national who was born in 1962 and lives in Găneasa, in Ilfov County (Romania).

The case concerned alleged shortcomings in Mr Voicu's conditions of detention while serving his sentence from May 2006 to January 2012, when he was suffering from functional deficiency due to his epilepsy and multiple spinal disorders.

At around the end of 2010 it was established that Mr Voicu, who had been declared clinically healthy by doctors when taken into prison in 2006, was suffering from a second-degree disability. He had been diagnosed with a number of disorders from 2009. One of these was his epilepsy, and according to Mr Voicu he had numerous epileptic fits while in detention. He also suffered a stroke in September 2010. In December 2010 he was granted one-off assistance for the purpose of moving his personal effects, but a medical recommendation of 2011 that he be given permanent assistance was not followed up.

While in detention Mr Voicu obtained an interruption of his sentence on health grounds for two periods (24 November 2008 - 1 July 2009 and 19 May - 26 August 2010). He underwent an operation on his spine in 2009 during the initial period. Physiotherapy sessions and a second operation, initially recommended by the doctors, could not take place on account of Mr Voicu's state of health.

In a judgment of 25 November 2010 the Bucharest Court of Appeal dismissed an application by Mr Voicu for an extension of the second interruption of sentence. All his other applications were dismissed, including his requests for a less severe prison regime.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Voicu alleged in particular that he had been detained without receiving adequate personal treatment or assistance and that, on account of his medical disorders, the conditions of his detention had amounted to inhuman treatment.

### Violation of Article 3

**Just satisfaction:** EUR 10,000 (non-pecuniary damage)

Just satisfaction

## Toșcuță and Others v. Romania (no. 36900/03)

The applicants are seven Romanian nationals who were born in 1943, 1945, 1956, 1933, 1959, 1922 and 1945 and live in Bucharest.

The case concerned the applicants' complaint that the domestic courts had annulled their title deeds in respect of plots of land for which they had not received any compensation. They relied on Article 1 of Protocol No. 1 (protection of property).

In its [principal judgment](#) of 25.11.2008 the Court found that the annulment of the applicants' title deeds had been based exclusively on acts attributable to the Romanian authorities and that no compensation or equivalent land had been granted. Accordingly, even supposing that the deprivation of property could be shown to have been in the public interest, the Court considered that the applicants had borne an individual and excessive burden as a result of having been deprived not only of their right to the peaceful enjoyment of two plots of land, but also of any compensation or redress. The Court thus held, unanimously, that there had been a violation of Article 1 of Protocol No. 1. It awarded the applicants 4,000 euros for costs and expenses.

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

**Just satisfaction:** The Court held that Romania shall enable, by appropriate means, Mr Adrian Toșcuță and Mr Paul Ion Șerban Toșcuță to take effective possession of the 6,581 sq. m of land and Mr Dănuț Negulescu, Mr Gheorghe Negulescu, Mr George Negulescu, Ms Maria Negulescu and Ms Sevastița Negulescu to take effective possession of the 2,500 sq. m of land, and that all applicants shall be provided with a document of title to their land. In the absence of such arrangements, Romania is to pay, for pecuniary damage: EUR 1,665,000 to Mr Adrian Toșcuță and Mr Paul Ion Șerban Toșcuță, jointly, and EUR 630,000 to Mr Dănuț Negulescu, Mr Gheorghe Negulescu, Mr George Negulescu, Ms Maria Negulescu and Ms Sevastița Negulescu, jointly. The Court further awarded the seven applicants, jointly, EUR 2,300 in respect of 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.