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

Press Release
issued by the Registrar of the Court

ECHR 090 (2015)
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Judgments of 24 March 2015

The European Court of Human Rights has today notified in writing 11 judgments[1]:

eight Chamber judgments are summarised below;

for three others, *Gallardo Sanchez v. Italy (application no. 11620/07), Zaieţ v. Romania (no. 44958/05)*, and *İsmail Sezer v. Turkey (no. 36807/07)*, separate press releases have been issued.

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

Antonio Messina v. Italy (application no. 39824/07)*

The applicant, Antonio Messina, is an Italian national who was born in 1946 and lives in Bologna (Italy).

The case concerned a reduction in sentence which had allegedly been granted to the applicant tardily, with, he submitted, the effect of extending the duration of the sentence he had to serve.

Mr Messina has been convicted on several occasions for serious offences; the last time was in 2001, by the Palermo Assize Court of Appeal, for membership of a mafia-type criminal organisation. He was imprisoned on several occasions between 1976 and 2007.

Mr Messina requested several reductions in sentence on the basis of 45 days per six months of imprisonment, as provided for by law. In 1998, 2003 and 2004 he obtained reductions in sentence from the Naples and later the Bologna judges responsible for the execution of sentences, in respect of periods of imprisonment after May 1998. In contrast, on 14 June 2004 the Bologna court responsible for the execution of sentences refused to grant him a reduction of sentence for the period prior to May 1998, on the ground that the criminal activity in question had been ongoing, and had ended only in September 1998. That decision was subsequently quashed following an appeal on points of law lodged by Mr Messina. The case was transmitted to the Bologna court responsible for the execution of sentences, which upheld the first decision on the same ground. The applicant's second appeal on points of law was dismissed. On 12 July 2007 Mr Messina's criminal record was amended, indicating that the offences for which he had been sentenced until May 1998 had run not until September 1998 but until September 1989. Following a request by the applicant, on 8 October 2007 the Bologna judge responsible for the execution of sentences granted him a reduction of sentence of 405 days, for the period from 1993 to 1998. The applicant was released on the same day. Had this last reduction in sentence been applied earlier, the applicant could have been released from 11 January 2007.

Relying in particular on Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, the applicant alleged that the delay in granting the reduction in sentence had the effect of prolonging the period during which he had to serve his sentence. He also alleged that the judge had not granted a reduction for the period from 23 November 2006 to 8 October 2007.

[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

Relying also on Article 5 § 5 (right to liberty and security) of the Convention, he complained that he had not received compensation for his wrongful imprisonment.

Violation of Article 5 § 1 (a)
Violation of Article 5 § 5

Just satisfaction: The applicant did not submit a claim for just satisfaction within the time-limit fixed by the Court.

Stettner v. Poland (no. 38510/06)

The applicant, Seweryn Stettner, is a Polish national who was born in 1951 and lives in Lublin (Poland). He was a senior doctor specialising in kidney transplants. The case concerned his detention on remand on charges of corruption.

Mr Stettner was arrested in June 2006 on charges of bribe-taking from his patients between 1997 and 2004. He was held in detention on remand for the next six months until the national courts decided to release him on bail. In the meantime, he appealed against his detention, claiming that it could seriously jeopardise his life or health as he suffered from sleep apnoea (a sleep disorder characterised by pauses in breathing during his sleep, requiring him to use a respirator at night). In the first two decisions on Mr Stettner's detention the courts justified keeping him in detention on remand on the basis of the reasonable suspicion against him and the severity of the anticipated penalty against him. In a further decision of August 2006, the courts found that non-custodial measures would be insufficient given the risk that Mr Stettner might obstruct the proceedings. The courts saw no reason to release him on health grounds, finding that he was provided with constant medical care in detention. Ultimately, in November 2006 the courts granted bail given the period that he had already spent in custody and the advanced stage of the investigation.

Mr Stettner complained, inter alia, that the authorities' grounds for ordering his detention had not been sufficient and that there had been a delay in their examination of his appeal against the decision of August 2006 to extend his detention on remand. He relied in particular on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court).

No violation of Article 5 § 3
Violation of Article 5 § 4

Just satisfaction: 2,000 euros (EUR) (non-pecuniary damage)

Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania (no. 2959/11)

The case concerned access to proper medical treatment for a prisoner whilst in detention and the difficulties faced by a non-governmental organisation to lodge an effective complaint following his death.

The applicant, the Association for the Defence of Human Rights in Romania – Helsinki Committee (Asociaţia pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki, "the APADOR-CH"), is a Romanian NGO, which lodged the present application on behalf of Ionel Garcea, now deceased.

Ionel Garcea was born in 1973 and died on 19 July 2007 in Rahova prison hospital. He had no known relatives. In 2002 he was sentenced to seven years in prison, the incidents described in this case took place whilst he was serving this sentence. Mr Garcea was diagnosed with a mental illness as well as other health problems and during his time in prison he was frequently admitted to the psychiatric ward of the prison hospital. He also made suicide attempts, refused to take medication and on three occasions was taken to hospital for surgery after he inserted a nail into his forehead. His prison

record states that he was monitored by a psychologist. Mr Garcea complained to APADOR-CH that he had been beaten by the prison guards on several occasions, stating that on one occasion he had lost consciousness and had to be hospitalised. The prison authorities, who denied using physical force, claimed that any restraint had only been in response to Mr Garcea's aggression and served merely to prevent Mr Garcea harming himself or prison staff. In 2007, whilst in Jileva prison hospital, Mr Garcea inserted another nail into his head. He was operated on in a civilian hospital and sent to Rahova prison hospital suffering from post-operative symptoms, sepsis and acute bronchopneumonia. He was returned once to the civilian hospital for further examination as his condition deteriorated, and then continued his course of treatment at the prison hospital. Mr Garcea died in Rahova prison hospital just over a month after the operation. The official investigations following his death are still pending.

Relying in particular on Article 2 (right to life), APADOR-CH complained that Mr Garcea had not been given a level of medical care compatible with his mental and physical health needs, and that the administrative and criminal investigations after his death had not been satisfactory. APADOR-CH argued in particular that certain essential steps had not been followed during the investigations.

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

Just satisfaction: EUR 1,423.90 to APADOR-CH, EUR 3,190 to Ms N. Popescu, and EUR 4,850 to Mr D. Mihai in respect of costs and expenses

Milena Felicia Dumitrescu v. Romania (no. 28440/07)

The applicant, Milena Dumitrescu, is a Romanian national who was born in 1939 and lives in Bucharest. Her case concerned the inefficiency of the State's investigations following her complaint to the police about an alleged violent attack.

Ms Dumitrescu lodged a criminal complaint in 1998, claiming to have been a victim of assault, theft, rape and of being detained against her will. A medical certificate stated she had injuries which could have been caused by blows, but made no mention of rape. Three weeks later the man she accused was arrested and a prosecutor started a criminal investigation into her allegations of theft and detention. In 1999 the investigators proposed charging the accused man with the aggravated theft of Ms Dumitrescu's property deeds, but this was rejected by the prosecutor, who requested the investigators first gather more evidence. The investigation into aggravated theft and unlawful detention was eventually dropped in 2003, but enquiries continued into the accusations of bodily injuries and threatening behaviour. Several hearings were held in 2004 but they were repeatedly adjourned due to the authorities' failure to notify the accused. In 2005 it transpired that he had left Romania for the USA. In 2005 the Bucharest District Court referred the case back to the prosecutor asking him to investigate the allegations of unlawful deprivation of liberty and rape, however the prosecutor decided to discontinue the rape investigation in 2006, claiming that the offence had not been proved. Some months later, almost nine years after the date of the alleged offence, the Bucharest District Court dismissed Ms Dumitrescu's criminal complaint because the period for criminal liability had expired in 2002 for the offence of threatening behaviour and in 2005 for bodily injury. Ms Dumitrescu appealed, complaining that she had immediately lodged a criminal complaint following the incident but that it had taken six years before the first court hearing was held and then, even after 11 hearings, the file had been sent back to the prosecutor's office. Her appeal was dismissed.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Ms Dumitrescu complained that the authorities had failed to carry out an effective investigation after she had made a criminal complaint.

Violation of Article 3 (investigation)

Just satisfaction: EUR 8,000 (non-pecuniary damage)

Pop and Others v. Romania (no. 31269/06)

The applicants, Daniel Viorel Pop, Ion Florin Roman, Zoltan Vasile Szilaghyi, and Zoltan Ştefan Vrasgyak, are Romanian nationals who were born in 1967, 1974, 1953, and 1961 respectively and live in Baia Mare (Romania). The case concerned their complaints about the proceedings brought against them for trafficking in Schengen visas.

In April 2001 the military security authorities started secretly monitoring the telephone conversations made by the applicants. The first two applicants were in the Romanian army at the time and the second two applicants were civilians. All four applicants were subsequently indicted in December 2002 for complicity in bribery, the military prosecuting authorities basing the accusations on the transcripts of the applicants' telephone conversations and on statements made by some of the individuals the applicants had allegedly helped to obtain visas as well as statements made by the applicants themselves. In April 2004 the Bucharest Military County Court convicted the applicants as charged and sentenced them to prison sentences of between six months and two years. Mr Roman was pardoned and the other three applicants were given suspended sentences. In a final judgment of December 2005 the Court of Cassation, sitting as an ordinary criminal court, upheld the applicants' convictions and sentences and dismissed their appeal on points of law.

The applicants made a number of complaints under in particular Article 6 (right to a fair trial) about the unfairness of the proceedings brought against them: notably, the lower courts which had examined the merits of the case against Mr Szilaghyi and Mr Vrasgyak (the second two applicants), who had been civilians, had been military courts composed exclusively of military judges and therefore had lacked impartiality and independence.

Violation of Article 6 – in respect of Mr Szilaghyi and Mr Vrasgyak, concerning the lack of impartiality and independence of the domestic courts

Just satisfaction: EUR 3,600 (non-pecuniary damage) each and EUR 1,500 (costs and expenses) each to Mr Szilaghyi and Mr Vrasgyak

Vereş v. Romania (no. 47615/11)*

The applicant, Cornel Vereş, is a Romanian national who was born in 1963 and lives in Livada (Romania). The case concerned the ill-treatment to which he had allegedly been subjected by a police officer, and his claims that there had been no effective investigation into this ill-treatment.

On 27 June 2009 Mr Vereş was arrested by a police officer in a bar following a call by the waitresses, who complained that the applicant, who was drunk, had insulted them. On the same date the police officer drew up an official report, indicating that Mr Vereş, who was receiving psychiatric medical treatment, had been aggressive and had injured himself seriously during the arrest.

On 3 July 2009 Mr Vereş complained to the Gherla prosecutor's office, alleging abusive conduct by the police officer and requesting a report by the Cluj Institute of Forensic Medicine. He alleged that the injuries sustained during his arrest had been caused by the police officer, who had punched and kicked him in the head and stomach and had walked on his fingers in order to crush them. On 18 February 2010 the public prosecutor at the Cluj Court held that there were no grounds for sending him for a forensic examination and decided not to bring a prosecution, a decision that was upheld by the head prosecutor and then by the Cluj County Court. Mr Vereş lodged a separate complaint about the investigators' refusal to send him to the forensic doctor, and on 13 November 2012 the prosecutors' office at the Cluj Court issued another decision not to bring a prosecution. After the case had been sent back to the prosecutor's office by the Cluj County Court, which ordered additional investigations, further decisions not to bring a prosecution were issued on 24 July and

29 November 2013 by the prosecutor's offices at the Cluj Court and the Cluj Court of Appeal. Those decisions were upheld, respectively, by the Cluj County Court and the Cluj Court of Appeal.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Vereş alleged that he had been ill-treated by a police officer during his arrest on 27 June 2009. He also alleged that no effective investigation had been conducted into this ill-treatment, referring in particular to the repeated refusal to send him for a forensic medical examination.

Violation of Article 3 (ill-treatment)
Violation of Article 3 (investigation)

Just satisfaction: EUR 12,000 (non-pecuniary damage)

Küçükbalaban and Kutlu v. Turkey (nos. 29764/09 and 36297/09)*

The applicants, Ms Aygül Küçükbalaban and Mr Mehmet Kutlu, are two Turkish nationals who were born in 1972 and 1971 respectively and live in Ankara (Turkey). They are both teachers in State schools run by the Ministry of Education. The case concerned the disciplinary sanction imposed on them for having taking part in an event that was co-organised by the trade union of which they were members, and the failure to communicate the opinion of the State Counsel at the Supreme Administrative Court.

On 15 February 2005 the applicants attended an event on the theme "World Peace against World War", organised by a civil-society group bringing together various associations, political parties and trade unions, including the trade union to which they were affiliated. On 14 June 2005 the provincial disciplinary panel imposed a disciplinary sanction, consisting in a one-year freeze on promotion, on the ground that the applicants had taken part in an unauthorised event to commemorate the arrest of the leader on an illegal organisation, and that they were in fact activists in a political party. On an appeal by the applicants, the Gaziantep Administrative Court upheld the disciplinary sanctions on 20 June and 29 September 2006. Ms Küçükbalaban and Mr Kutlu appealed on points of law to the Supreme Administrative Court, which upheld the contested judgments, in line with the opinion issued before the deliberations by the judge rapporteur and the State Counsel at the Supreme Administrative Court.

Relying in particular on Article 11 (right to freedom of assembly and association), the applicants complained that the sanction imposed on them had amounted to disproportionate interference in the freedoms guaranteed by that Article.

Violation of Article 11

Just satisfaction: EUR 1,500 (non-pecuniary damage) each to Ms Küçükbalaban and Mr Kutlu

Süleyman Demir and Hasan Demir v. Turkey (no. 19222/09)

The applicants, Süleyman Demir and Hasan Demir, father and son, are Turkish nationals who were born in 1951 and 1973 respectively and live in Hakkari (Turkey). Their case concerned the authorities' inadequate investigation and handling of a case into an allegation of violence at the hands of two gendarmes.

Hasan Demir received a telephone call in 2007 asking that his father, Süleyman Demir, report to the Çukurca Gendarmerie Station. Hasan Demir accompanied his father there later the same day and waited whilst he went inside. Süleyman Demir claims he was then beaten and abused by two gendarmes, who also made death threats towards him and his family, for approximately one hour. Hasan Demir reported that his father had to be physically supported when he left Çukurca Gendarmerie Station and he had to call the local village guard to give them a lift home in his car. Süleyman Demir was examined at the Çukurca Hospital the same evening and transferred to the

Hakkari State hospital where he was examined again. The day after his summons to the Gendarmerie Station Süleyman Demir made a formal complaint to the Hakkari prosecutor against the two gendarmes. The Hakkari prosecutor decided he did not have jurisdiction so he transferred the file to the Çukurca prosecutor. The Çukurca prosecutor also decided that he did not have jurisdiction and so transferred the file to the Van Military Criminal Court. The Van military prosecutor gathered some statements but in 2008 decided against opening an investigation. Following an appeal lodged by Süleyman Demir, the Ağri Military Court ordered criminal proceedings be brought against the two gendarmes. The Van Military Court therefore instigated proceedings but in 2010 decided it did not have jurisdiction to try the case and passed it to the Çukurca Criminal Court of First Instance. However in 2012 the Çukurca Criminal Court of First Instance decided it did not have jurisdiction either and forwarded the case to the Çukurca Magistrates' Court where the case is still pending.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Süleyman Demir complained that he had been subjected to ill-treatment, insults and intimidation at the hands of the two gendarmes and that there had been no effective investigation into his complaints. He also complains about the delays in the court proceedings.

Violation of Article 3 (ill-treatment) – in respect of Süleyman Demir
Violation of Article 3 (investigation) – in respect of Süleyman Demir

Just satisfaction: EUR 19,500 (non-pecuniary damage) and EUR 3,000 (costs and expenses) to Süleyman Demir

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