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 14 judgments on Tuesday 23 June 2015 and 70 judgments and / or decisions on Thursday 25 June 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 23 June 2015

Niskasaari and Otavamedia Oy v. Finland (no. 32297/10)

The applicants are Mikko Veli Niskasaari, a Finnish national, who was born in 1952 and lives in Helsinki, and Otavamedia Oy, a Finnish company. The case concerns defamation proceedings.

Mr Niskasaari is a journalist working for a major weekly magazine which is published by Otavamedia Oy. In May 2002 the magazine published an article written by Mr Niskasaari, in which he criticised the manner in which two TV documentaries, aired in March 1998 and November 2001, had been made. The documentaries concerned the issues of mould-infested houses and the protection of forests. In his article Mr Niskasaari notably alleged that some figures used in the documentaries were fabricated and that a researcher's testimony which one of the reporters knew to be false had nonetheless been included in one of the documentaries.

The reporter brought a claim for damages against Mr Niskasaari and Otavamedia Oy. Following the reporter's complaint, the prosecutor also brought proceedings on charges of defamation against Mr Niskasaari. After a district court had initially dismissed the charges and the compensation claim in January 2007, the appeal court convicted Mr Niskasaari of defamation and sentenced him to a fine of 240 euros in January 2009. At the same time Mr Niskasaari was ordered to pay the reporter 2000 euros in damages, and Otavamedia Oy was ordered to pay him 4000 euros in damages and his costs and expenses. In December 2009 the Supreme Court refused the applicants leave to appeal.

The applicants complain of a violation of Article 10 (freedom of expression) of the European Convention on Human Rights, arguing that there was no legitimate reason to interfere with their right to freedom of expression and maintaining in particular that the sanctions imposed on them were disproportionate. They also allege a violation of Article 6 § 1 (right to a fair trial within a reasonable time) on account of the length of the proceedings against them.

Sidabras and Others v. Lithuania (nos. 50421/08 and 56213/08)

The case concerns legislation banning former KGB employees from working in certain spheres of the private sector.

The applicants, Juozas Sidabras, Kęstutis Džiautas, and Raimundas Rainys, are Lithuanian nationals who were born in 1951, 1962, and 1949 respectively. Juozas Sidabras lives in Kaunas and Kęstutis Džiautas, and Raimundas Rainys live Vilnius (both in Lithuania).

Mr Sidabras was a tax inspector, Mr Džiautas a prosecutor and Mr Rainys a lawyer in a private telecommunications company until being dismissed from their posts in 1999 (the first two applicants) and in 2000 (the third applicant) as they were found to have the status of "former KGB officers". Thus, under the relevant legislation ("the KGB Act [1]), they were banned from applying for

various private-sector posts. All three men subsequently brought proceedings before the domestic courts, which were unsuccessful.

The three applicants then lodged applications with the European Court of Human Rights and in judgments of 27 July 2004 (in the case of Sidabras and Džiautas v. Lithuania – application nos. 55480/00 and 59330/00) and 7 April 2005 (in the case of Rainys and Gasparavičius v. Lithuania – nos. 70665/01 and 74345/01) it held that there had been violations of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) with regard to the ban on Mr Sidabras, Mr Džiautas and Mr Rainys finding employment in the private sector on the ground that they had been former KGB officers. In those judgments the Court emphasised that the State-imposed restrictions on a person's opportunity to find employment with a private company for reasons of lack of loyalty to the State could not be justified in the same manner as restrictions on access to their employment in the public service. Moreover, the employment restrictions had been imposed on the applicants a decade after Lithuanian independence (in 1990) and the applicants' KGB employment had been terminated. The Council of Europe's Committee of Ministers, responsible for the supervision of enforcement of ECHR judgments, has since begun the monitoring of those judgments' enforcement and all three applicants have been paid the amounts awarded to them for non-pecuniary damage. However, no final resolution has as yet been adopted.

Following those ECHR judgments, the KGB Act remaining in force, the applicants initiated new court proceedings. The first two applicants lodged applications with the administrative courts claiming damages for arbitrary discrimination. The third applicant sought reinstatement in his previous job at the private telecommunications company. In the case of Mr Sidabras and Mr Džiautas (the first two applicants), the Supreme Administrative Court ultimately concluded in April 2008 that there was no proof that they had in fact been prevented from obtaining a private sector job because of the restrictions in the KGB Act. On the contrary, as concerned Mr Sidabras it found that he had not found employment because he lacked the necessary qualifications. In the case of Mr Rainys the Supreme Court, although accepting that his dismissal had been unlawful, ultimately concluded in June 2008 that the question of Mr Rainys' reinstatement to his job could not be resolved favourably while the KGB Act was still in force.

All three applicants complain about Lithuania's failure to repeal the legislation banning former KGB employees from working in certain spheres of the private sector, despite the ECHR judgments in their favour. Mr Rainys alleges in particular that the State had chosen to pay compensation instead of amending the relevant legislation. They rely on Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and Article 46 (binding force and execution of judgments) of the European Convention.

Just Satisfaction

Koprivica v. Montenegro (no. 41158/09)

The applicant, Veseljko Koprivica, is a Montenegrin national who was born in 1948 and lives in Podgorica (Montenegro). He was former editor-in-chief of the *Liberal*, a Montenegrin weekly magazine.

The case concerned his complaint about defamation proceedings brought against him for reporting in September 1994 that 16 Montenegrin journalists were going to be tried for incitement to war before the International Criminal Tribunal for the former Yugoslavia. The courts found against him

[1] Article 2 of the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Permanent Employees of the Organisation, adopted on 16 July 1998, which entered into force on 1 January 1999.

and ordered him to pay the plaintiff (one of the 16 journalists) EUR 5,000 in damages and EUR 2,677.50 for legal costs.

In its principal judgment of 22 November 2011 the Court found that ordering Mr Koprivica to pay damages 25 times higher than his pension had been excessive and held that there had been a violation of Article 10 (freedom of expression). It further held that the question of the application of Article 41 of the Convention (just satisfaction) was not ready for decision and reserved it for examination at a later date. The Court will deal with this question in its judgment of 23 June 2015.

Butnaru and Bejan-Piser v. Romania (no. 8516/07)

The applicants, Cristina Butnaru and David Bejan-Piser, are Romanian nationals who were born in 1969 and 1976 respectively and live in Fărăoani.

The case concerns an allegation that they were tried twice for the same set of facts.

On 2 June 2004 Ms Butnaru and Mr Bejan-Piser went to a house which had belonged to Ms Butnaru's father and which was occupied by D.M.M. at the relevant time. Ms Butranu and D.M.M. had previously been involved in several disputes with regard to ownership of the house. On the date in question a violent disagreement broke out.

After the incident Ms Butnaru, who was unconscious, was taken to hospital. D.M.M. filed a criminal complaint against Ms Butnaru and Mr Bejan-Piser for bodily harm. She stated that the applicants had broken into her house and had struck her. By a judgment of 7 November 2005, the court held that the evidence was contradictory and insufficient, and acquitted the applicants.

By an indictment of 31 May 2005, the prosecutor's office committed Ms Butnaru and Mr Bejan-Piser for trial on charges of assault against D.M.M. and robbery. By a judgment of 7 March 2006 the county court sentenced Ms Butnaru to seven years' imprisonment for assault and robbery and Mr Bejan-Piser to three years' imprisonment for aiding and abetting her. Following an appeal by the applicants, Ms Butnaru's sentence was reduced to four years' and that of Mr Bejan-Piser to 18 months' imprisonment. The appeal judgment was upheld in a judgment issued by the High Court of Cassation and Justice on 28 June 2006.

Ms Butnaru and Mr Bejan-Piser lodged an application with the High Court of Cassation and Justice to have its judgment of 28 June 2006 set aside. They relied on the *res judicata* principle and argued that they had already been acquitted by the judgment issued at first instance on 7 November 2005. The High Court of Cassation and Justice dismissed the application as ill-founded.

Again relying on the acquittal judgment delivered by the first-instance court on 7 November 2005, Ms Butnaru and Mr Bejan-Piser applied to the county court for review of its judgment of 7 March 2006. They stated that they had been acquitted on 7 November 2005 and that they were thus in a position of having been tried twice for the same facts. The court dismissed their request as ill-founded.

The appellate court upheld Ms Butnaru's appeal and noted that she had been judged twice for the same acts of violence which had occurred on 2 June 2004. It sent the case to the High Court of Justice for an examination of the merits. The High Court declared inadmissible the application to have the judgment set aside, on the ground that it had already ruled on the issue of the finality of the judgment.

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice), the applicants allege that they were tried twice in relation to the same events of 2 June 2004. They also allege that there have been violations of their rights as guaranteed by Articles 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial) and 7 (no punishment without law), and also of Article 1 of Protocol No. 1 (protection of property).

Caraian v. Romania (no. 34456/07)

The applicant, Vasile Caraian, is a Romanian national who was born in 1940 and lives in Bucharest.

The case concerns Mr Caraian's presumption of innocence in criminal proceedings against him which were discontinued as time-barred.

Mr Caraian was indicted in September 1997 on a number of offences including bribery, complicity in fraud and forgery. The prosecuting authorities terminated his case in March 2005 during the third round of proceedings at the pre-trial stage, finding that even though Mr Caraian was guilty of the offences for which he had been indicted, the criminal proceedings against him had become time-barred. This decision was subsequently confirmed by judgments of the domestic courts. Thus, by a final judgment of March 2007 the Bacău County Court dismissed Mr Caraian's appeal on points of law, acknowledging that the prosecutor's order of March 2005 was lawful and that Mr Caraian had committed the offences of complicity in fraud and forgery.

Relying on Article 6 § 2 (presumption of innocence), Mr Caraian complains about the dismissal of his appeal against the prosecutor's order to declare him guilty even though the criminal proceedings had been discontinued as time-barred. He complains in particular that the domestic courts confirmed his guilt without retaining the case for examination or examining additional evidence. He also complains under Article 6 § 1 (right to a fair trial within a reasonable time) about the excessive length of the criminal proceedings against him.

Costel Gaciu v. Romania (no. 39633/10)

The applicant, Costel Gaciu, is a Romanian national who was born in 1972 and lives in Gherla (Romania).

The case concerns his complaint about his pre-trial detention for one year and ten months, without conjugal visits and in conditions he alleges were inhuman.

He was arrested in March 2009 on suspicion of conspiracy to commit crimes and blackmail and, having spent around four months in the Cluj County Police detention Centre, was transferred to Gherla Maximum Security Prison until February 2011 when he was released with a prohibition on leaving town. During his detention Mr Gaciu made a number of requests to be allowed conjugal visits from his wife, which were refused on the ground that, under the relevant legislation, only convicted prisoners were entitled to such visits. As a prisoner on remand Mr Gaciu was allowed ordinary visits, and his wife therefore visited him in a specially designated area where the couple were separated by a glass wall and had to talk using a telephone, under the surveillance of prison guards. Mr Gaciu complained to the prison authorities and the domestic courts, without success.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), he alleges in particular that the Cluj detention centre and Gherla Prison were overcrowded and had poor ventilation and hygiene. He also complains about the refusal of his requests for conjugal visits during his pre-trial detention solely because he was not a convicted prisoner, in breach of Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination).

Opriș v. Romania (no. 15251/07)

The applicant, Ioan Radu Claudiu Opriș, is a Romanian national who was born in 1974 and lives in Sighetu Marmaţiei.

The case concerns an undercover police operation to gain access to a drug trafficking network, resulting in the arrest and conviction of Mr Opriș.

On 5 June 2003 the Cluj Directorate General for combatting organised crime and drug trafficking opened a file with regard to Mr Opriș and V.P. on the ground that these two individuals were acting as part of a network of drug traffickers. The prosecutor's office authorised an investigator, acting

with an informant, to infiltrate the traffickers' network for a period of thirty days, with the task of obtaining a kilo of heroin.

On 20 June 2003 Mr Opriș was arrested by the police. A parcel containing heroin was found in his car. On the same day Mr Opriș stated, in the absence of a lawyer, that an individual had pressed him to obtain drugs for the purpose of reselling them. He added that he had accepted the request because he was experiencing financial difficulties. Mr Opriș subsequently confirmed this statement in the presence of an officially-appointed lawyer.

On 23 September 2003 the court took evidence from Mr Opriș, who denied the charges against him and stated that the drugs had been placed in his car without his knowledge. By a judgment of 27 February 2004, the court sentenced Mr Opriș to five years' imprisonment for drug trafficking on the basis of the statements gathered by the prosecutor's office and the court, the list of telephone numbers to which the defendants had made calls from their mobile phones, and photographs taken during the on-the-spot investigation.

By a judgment of 28 October 2004, the High Court of Cassation and Justice allowed an application for review by Mr Opriș and remitted the case to the court. At the close of the proceedings on 31 January 2006, the court again sentenced Mr Opriș to five years' imprisonment for drug trafficking. Mr Opriș lodged an appeal, requesting additional investigations and stating that he had been set up by the police. The appellate court dismissed his appeal. On 20 September 2006 the High Court of Cassation and Justice dismissed his appeal on points of law without examining the argument based on police incitement.

Relying on Articles 6 § 1 (right to a fair trial), 6 § 3 (b) (right to have adequate time and facilities for one's defence) and 6 § 3 (d) (right to cross-examine witnesses), Mr Opriș alleges that he was subjected to police incitement, that he was not assisted by a lawyer during his first questioning and that he was unable to question the undercover police officer or his informant.

Kovárová v. Slovakia (no. 46564/10)

The applicant, Eva Kovárová, is a Slovak national who was born in 1947 and lives in Bratislava.

The case mainly concerns Ms Kovárová's complaint of having been denied access to court.

In May 2007 she lodged an action with a Bratislava district court seeking a ruling declaring that a meeting of flat owners held in April 2007 had been unlawful and that the decisions adopted at that meeting were void. The district court discontinued the proceedings in March 2008 on the grounds that the defendant had in the meantime ceased to exist and had no legal successor. That decision was upheld by the Bratislava regional court. The Supreme Court, in May 2009, declared her cassation appeal inadmissible.

In December 2009, the Constitutional Court declared her constitutional complaint inadmissible. It found that, in so far as Ms Kovárová's complaint concerned the regional court, it had been brought outside the statutory two-month time-limit. It thus only examined the decision of the Supreme Court, which as such concerned no more than the admissibility of the applicant's cassation appeal, and found that it was supported by adequate reasons and was not arbitrary.

Relying on Article 6 § 1 (right to a fair hearing / access to court), Ms Kovárová complains that the ordinary courts' decisions on her civil claim were arbitrary and that the Constitutional Court breached her right of access to court in that it rejected her complaint against the regional court's decision as belated.

Balta and Demir v. Turkey (no. 48628/12)

The applicants, Ahmet Balta and Ahmet Gökşen Demir, are Turkish nationals who were born in 1974 and 1991 respectively and live in Tunceli.

The case concerns the applicants' conviction for membership of an illegal organisation on the basis of statements by an anonymous witness whom the applicants were unable to question at any stage of the proceedings.

On 5 June 2009 an anonymous witness was heard by the prosecutor's office in the context of a criminal investigation into the activities of the PKK, an illegal organisation. The witness claimed to have identified Mr Balta and Mr Demir as members of that organisation.

On 22 June 2009 the applicants were arrested and placed in police custody. On 25 June 2009 the prosecutor's office questioned them about their links with the PKK. During those interviews they disputed the statements made by the anonymous witness who had claimed to identify them. Mr Demir's lawyer requested that the witness's identity be disclosed. Both applicants were released on the same date.

On an unspecified date Mr Balta, Mr Demir and 14 other persons were charged with membership of the PKK. On 16 September 2009, acting on judicial instructions, a judge questioned the anonymous witness. He was heard in private, in accordance with Article 58 of the Code of Criminal Procedure and the Witness Protection Act (Law no. 5276).

On 20 October 2010 Mr Balta and Mr Demir denied the accusations against them and contested the manner in which the anonymous witness had been heard. On 21 October 2010 the assize court sentenced them to six years and three months' imprisonment for membership of an illegal organisation.

On 10 December 2010 Mr Balta and Mr Demir appealed on points of law. The Court of Cassation upheld the first-instance judgment.

Relying, in particular, on Article 6 (right to a fair trial and right to cross-examine witnesses), the applicants complain about the fact that they were unable, at any stage in the proceedings, to question or to have questioned the anonymous witness whose statements, in their opinion, served as the basis for their convictions.

Ercan Bozkurt v. Turkey (no. 20620/10)

The applicant, Ercan Bozkurt, is a Turkish national who was born in 1976 and lives in Bitlis (Turkey).

The case essentially concerns the compensation proceedings Mr Bozkurt brought following a landmine explosion in which he was left disabled.

On 10 November 2000 Mr Bozkurt and his two brothers were collecting leaves and twigs with their oxen on Darkolink hill, Bitlis, not far from a gendarmerie station when the oxen's cart detonated a landmine. Mr Bozkurt was seriously injured and both his legs had to be amputated below the knee. Shortly afterwards the gendarmes drafted an incident report in which they formed the opinion that the landmine must have been planted by members of the PKK (the Kurdistan Workers' Party, an illegal organisation) who, aware of the fact that Darkolink Hill was regularly used by the gendarmerie for exploration and surveillance purposes, were targeting the security forces. This opinion was confirmed by Mr Bozkurt's brothers and five village guards in their witness statements. In his statement Mr Bozkurt said that he regularly went to the hill but that he did not know the area was mined; he told the gendarmes that he did not wish to lodge a complaint about the incident.

Mr Bozkurt did however bring two sets of compensation proceedings for the injuries he had sustained during the incident as well as the loss of his oxen. The first set of proceedings commenced in August 2003 and ended in April 2005 when the administrative courts decided to discontinue the proceedings on account of Mr Bozkurt's failure to pay the court fees in time. This decision became final as Mr Bozkurt did not appeal. The second set of proceedings started in November 2006 and ended in January 2014 with Mr Bozkurt's rectification request being rejected by the Supreme

Administrative Court, which had found that he had failed to lodge his compensation claim within the statutory time-limit.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), Mr Bozkurt complains that the first set of compensation proceedings were dismissed due to a mistake, arguing that he had in fact paid the court fees; and that the length of the second set of proceedings, more than seven years and two months before two levels of jurisdiction, was excessive. The Court also requested the Government to make submissions as to its responsibility under Article 2 (right to life) and Article 13 (right to an effective remedy) to protect Mr Bozkurt's life from terrorist acts.

Özçelebi v. Turkey (no. 34823/05)

The applicant, Ömer Fuat Özçelebi, is a Turkish national who was born in 1961 and lives in Istanbul.

The case concerns a criminal conviction for Mr Özçelebi's use of the word "kelle" (a slang word for head, which could be translated into English as 'mug') to refer to photographs and a statue of Atatürk.

Mr Özçelebi, a navy commander, was charged before a military court for having said to a non-commissioned officer, while pointing to images of Atatürk exhibited on a wall: "While you were at it, you might have chosen a bigger picture of his mug."

On 2 June 1998 the military court sentenced him to one year's imprisonment, noting that the term "kelle" could have a slang meaning referring to the head of an animal. According to the court, Mr Özçelebi had deliberately used this term with the intention of insulting the memory of Atatürk. The Military Court of Cassation quashed the judgment. The military court to which the case was remitted issued a decision to the effect that it did not have jurisdiction, given that Mr Özçelebi had recently taken early retirement, and that the case was now a matter for the ordinary courts.

The criminal court of first instance sentenced Mr Özçelebi to one year's imprisonment, in application of section 1 of Law no. 5816 penalising insults to the memory of Atatürk.

By an application of 26 October 2005, Mr Özçelebi asked the court that his sentence – which had not yet been served – be commuted to an alternative measure, as provided for by two articles of the new Criminal Code which had entered into force in the intervening period.

On 2 July 2009 the court again sentenced Mr Özçelebi to one year's imprisonment, but this time it commuted the penalty to a fine of about 3,400 euros (EUR). Mr Özçelebi appealed on points of law against that judgment. A new law entered into force on 5 July 2012. By a judgment of 30 April 2013, a criminal division of the Court of Cassation upheld the contested judgment, but ordered that the sentence be suspended, in application of a provision of the new law. On 29 August 2013 the criminal court complied with the Court of Cassation and suspended payment of the fine for three years.

Without relying on any specific provision of the Convention, Mr Özçelebi complains that his conviction and sentence amount to a restriction on his freedom of expression. He also alleges that there has been a violation of his right to a fair trial, and relies on Article 6 of the Convention.

Salin and Karşin v. Turkey (no. 44188/09)

The applicants, Yusuf Salin and Nihat Karşin, are Turkish nationals who were born in 1982 and 1985 respectively and live in Tekirdağ.

The case concerns allegations of ill-treatment allegedly sustained by them in police custody.

Mr Salin and Mr Karşin were arrested on 20 August 2007 during an operation by the security forces. They were placed in police custody from 10 p.m. on 20 August 2007 to 10 p.m. on 22 August 2007 for membership in a terrorist organisation and possession of explosives. They were suspected of having set fire to municipal buses.

On 21 August 2007 the lawyer acting for Mr Salin and Mr Karşin lodged a complaint with the Istanbul public prosecutor concerning the torture allegedly sustained by his clients on the part of the gendarmes.

On 23 August 2007 the lawyer challenged certain of the medical reports drawn up on the ground that they did not reflect reality. On the same day, a judge heard Mr Salin and Mr Karşin, and four other persons who had been arrested at the same time as them. Mr Karşin stated that he had been tortured while in police custody. He submitted that only one of the three doctors who had examined him had done so correctly. The judge ordered that Mr Salin and Mr Karşin be detained.

On 2 January 2008, after having questioned the gendarmes, the public prosecutor issued a decision not to bring proceedings, concluding that the applicants had resisted the security forces and, in so doing, had been injured. Mr Salin and Mr Karşin challenged this decision, but their appeal was dismissed.

By a judgment of 30 December 2009, Mr Salin and Mr Karşin were sentenced to three years and nine months' imprisonment, and to a criminal fine, for unlawful possession or use of explosives or similar products, and to 6 years and three months' imprisonment for having committed offences on behalf of the PKK terrorist organisation.

Relying on Articles 3 (prohibition on torture and inhuman or degrading treatment) and 13 (right to an effective domestic remedy), the applicants complain of the ill-treatment to which they were allegedly subjected by the gendarmes while in police custody and of the inadequacy of the investigation conducted by the public prosecutor.

Selahattin Demirtaş v. Turkey (no. 1) (no. 15028/09)

The applicant, Selahattin Demirtaş, is a Turkish national who was born in 1973 and lives in Diyarbakır (Turkey).

The case concerns an article published in a local newspaper and on Internet allegedly containing incitement to violence against Mr Demirtaş and a number of other members of a pro-Kurdish political party.

Mr Demirtaş, currently the co-chair of HDP (People's Democratic Party), was a member of the DTP (Party for a Democratic Society), a pro-Kurdish political party whose dissolution was ordered in 2009. On 11 October 2007 Mr I.E. published in the Bolu local newspaper and on the paper's website an article entitled "Turk, here is your enemy" which, according to the applicant, contained incitement to commit a crime against him and insults. In November 2007 Mr Demirtaş' lawyer filed a petition with the prosecuting authorities, requesting a criminal investigation and that Mr I.E. be punished for incitement to commit a crime and to disrespect the law, and for insulting his client. In December 2007 the prosecuting authorities decided not to bring criminal proceedings against Mr I.E., concluding that there had been a factual basis for his article and that, in the context of freedom of the media to express opinions even using strong language, it had remained with the boundaries of acceptable criticism. Mr Demirtaş' objection against this decision was ultimately dismissed in August 2008.

Relying in particular on Article 2 (right to life), Mr Demirtaş complains that the authorities failed to punish the author of the article which had exposed him to a risk of death.

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.

Farkas v. Hungary (no. 4968/10)

Thursday 25 June 2015

Isayeva v. Azerbaijan (no. 36229/11)

The applicant, Ofeliya Alik gizi Isayeva, is an Azerbaijani national who was born in 1957 and died in August 2012. Her sister has continued the proceedings on her behalf. At the time of the events Ms Isayeva lived in Baku. The case concerns her pre-trial detention.

Ms Isayeva was charged with illegal possession of drugs in August 2009. At the same time, the trial court ordered her remand in custody for two months. In September 2009 the investigator brought proceedings against her on charges of fraud and joined the two sets of proceedings. Her remand in custody was subsequently extended on several occasions by the trial court, citing in particular the risk that she might abscond or obstruct the investigation. Her appeals against the measure were dismissed.

In May 2010 Ms Isayeva was convicted as charged and sentenced to ten years' imprisonment. However, the judgment was quashed by the Supreme Court in September 2010, finding that her defence rights had been violated, among other things because she had not had adequate time and facilities for the preparation of her defence. The trial court remitted the case to the prosecutors and at the same time decided that Ms Isayeva should remain in detention. Again, her custody was subsequently extended on several occasions and her appeals were dismissed. On 30 May 2012 she was again convicted as charged and sentenced to nine years' imprisonment. She died in prison while her appeal against the judgment was pending.

Relying on Article 5 §§ 1 (right to liberty and security) Ms Isayeva complained that her detention from 7 April to 4 May 2011 had been unlawful as it had not been covered by a court order. Under Article 5 § 3 (entitlement to trial within a reasonable time or to release pending trial), she complained that the national courts had failed to justify the need for her continued detention.

Canonne v. France (no. 22037/13)

The applicant, Christian Canonne, is a French national who was born in 1941 and lives in Crans-Montana (Switzerland). He is the grandson of the founder of the Valda lozenges company and held the post of deputy chairman of the company which owns the Valda brand.

In this case, the applicant complains about the fact that the domestic courts inferred his paternity from his refusal to submit to the genetic tests ordered by them.

Christiane P., who was then in divorce proceedings and who at the relevant time was employed in a management capacity by the Valda laboratories, gave birth on 16 July 1982 to a daughter, Eléonore. On 6 January 1988 Eléonore was recognised by Jan Willem H., whom Christiane P. married shortly afterwards. The couple divorced in 1997.

On 11 July 2002 Eleonore P. brought proceedings in the Paris *tribunal de grande instance* against Mr Canonne, seeking a judicial declaration of paternity. On 18 April 2003 she brought proceedings in respect of Jan Willem H., in order to have his declaration of paternity annulled. The two cases were joined.

On 21 September 2004 the *tribunal de grande instance* ordered tests in order to determine the likelihood that Jan Willem H. was the father. The results indicated, conclusively, that he was not the child's father.

On 3 January 2006 the *tribunal de grande instance* ordered tests in order to determine whether or not Mr Canonne could be the father. That judgment was upheld by the Paris Court of Appeal on 25 October 2007. As Mr Canonne had not responded to the summons to submit to tests, the expert reported that he was unable to carry out his instructions.

By a judgment of 20 October 2009, the court, drawing conclusions from Mr Canonne's refusal to submit to the tests, held that Mr Canonne was the father of Eléonore P. and ordered that a marginal note be entered on the birth certificate to that effect.

Mr Canonne lodged an appeal before the Paris Court of Appeal. He alleged that, by inferring his paternity from his refusal to submit to tests, the court had breached the constitutional principle of the inviolability of the human body. The court of appeal upheld the judgment. Mr Canonne appealed on points of law. The Court of Cassation dismissed his appeal.

Relying on Article 6 § 1 (right to a fair hearing), the applicant criticises the lack of reasoning in the decisions taken by the Court of Cassation with regard to his appeal on points of law. He submits that certain documents submitted to the domestic courts did not comply with the principle of fairness in administering evidence. Relying on Article 8 (right to respect for private and family life), taken alone and in conjunction with Article 6 § 1, he complains about the fact that the domestic courts inferred his paternity from his refusal to submit to the genetic tests ordered by them. He emphasises that under French law individuals who are the respondents in paternity actions are obliged to submit to a DNA test in order to establish that they are not the fathers. He alleges a breach of the principle of the inviolability of the human body which, in his view, prohibits any enforcement of genetic tests in civil cases.

Couturon v. France (no. 24756/10)

The applicant is a French national who was born in 1921 and lives in Neuilly-Sur-Seine (France).

In this case, the applicant complains about the failure to pay compensation for the fall in his property's value as a result of the construction of the A89 motorway.

Mr Couturon owns a complex of buildings on the territory of the Naves municipality in Corrèze, made up of the Château de Bach ("the castle"), the outhouses and a plot of land with an initial area of 27 hectares. The castle, its entrance gate and the remains of a cloister have been included in the secondary list of historic buildings since 1993.

A plot of land of about 88 sq. m. adjacent to the entrance gate was expropriated as part of the preparations for construction of the A89 motorway, declared to be in the public interest, the aim of which was to create a rapid transport link between Bordeaux and Clermont Ferrand.

By a judgment of 13 October 2000, the Tulle *tribunal de grande instance* fixed the compensation to the applicant for the expropriation at about 18,127 euros (EUR) but dismissed Mr Couturon's claim for an award for the depreciation in the value of the unexpropriated part of the property.

By a judgment of 16 December 2002 the Limoges Court of Appeal held, among other conclusions, that although the applicant's property would lose some of its attractiveness, this would not result from the deprivation of the above-mentioned plot of land in itself, but rather from the infrastructure developments and works carried out. It concluded that this issue did not form part of the proceedings on the compensation due for expropriation of the plot of land.

The A89 motorway, running about 250 metres from the front of the castle, was opened to traffic on 24 February 2003.

On 8 December 2003 Mr Couturon brought proceedings before the Limoges Administrative Court, requesting an annual payment of EUR 5,000 as compensation for the noise disturbances arising from the motorway's operations, and also EUR 231,722.50 as compensation for the harm sustained through the loss of value of his property as a result of its construction. Having initially been granted, Mr Couturon's claims were dismissed by the Bordeaux Administrative Court of Appeal, which considered that in the absence of any abnormal or special damage, the loss of value complained of by the applicant could not give rise to compensation. The *Conseil d'État* also dismissed a subsequent appeal.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Couturon complains about the failure to pay compensation for the loss of value of his property on account of the construction of the A89 motorway on the part of the land that was expropriated.

Lutanyuk v. Greece (no. 60362/13)

The applicant, Ivan Mikhaylovich Lutanyuk, is a Ukrainian national who was born in 1970 and currently lives in Ukraine.

The case concerns the conditions of detention in the Igoumenitsa police station and in Ioannina, Korydallos and Corfu Prisons.

Mr Lutanyuk was a driver for a Polish international transport company. On 10 May 2011 he was arrested by the border police in the port of Igoumenitsa because he was transporting, in his lorry, 46 Afghan, Pakistani, Iranian and Iraqi nationals who had entered Greek territory illegally. Accused of illegal transport of irregular migrants, he was placed in pre-trial detention in the Igoumenitsa police station. On 26 May 2011 he was transferred to Ioannina Prison, then on 8 September 2011 to Korydallos Prison.

On 5 March 2012 Mr Lutanyuk was found guilty of transporting irregular migrants and sentenced to 147 months' imprisonment. That sentence was reduced to ten years' imprisonment by the court of appeal, ruling on an appeal by Mr Lutanyuk. On 28 June 2012 Mr Lutanyuk was transferred to Corfu Prison and was released in September 2014.

Relying on Article 3 (prohibition on torture and inhuman or degrading treatment), Mr Lutanyuk complains of the conditions in which he was detained in the Igoumenitsa police station and in the Ioannina, Korydallos and Corfu Prisons.

Anatoliy Kuzmin v. Russia (no. 28917/05)

The applicant, Anatoliy Kuzmin, is a Russian national who was born in 1971 and lives in Chelyabinsk (Russia).

The case concerns the conditions of Mr Kuzmin's detention in a court convoy cell, where he was kept on several occasions between 11 March and 31 August 2005 during his trial on charges of robbery. According to his submissions he spent on average 4-5 hours per day in a convoy cell, a barred room of approximately 4 square metres, usually with six other accused. The cell did not have a toilet and detainees were taken to the toilet on order by the wardens; detainees were not allowed to smoke.

The Russian Government confirmed the size of the cells and the fact that they had no toilet, but submitted that Mr Kuzmin had access to the toilet at any time on request. The Government also submitted that the documents indicating the number of detainees in the cells and the time they spent there had been destroyed as the time-limit for their storage had expired.

In April 2011 Mr Kuzmin was convicted as charged and in July 2005 the judgment was upheld on appeal. In supervisory review proceedings the presidium of the regional court, in November 2006, reduced his initial nine-year sentence to eight years and six months' imprisonment.

Mr Kuzmin complains that the conditions of his detention in the convoy cells were in breach of Article 3 (prohibition of inhuman or degrading treatment).

Saydulkhanova v. Russia (no. 25521/10)

The applicant, Kameta Saydulkhanova, is a Russian national who was born in 1958 and lives in Grozny (the Chechen Republic, Russia).

The case concerns the alleged abduction of her son, Muslim Saydulkhanov, born in 1982, by State servicemen in January 2004.

According to Ms Saydulkhanova's submissions, her son, who worked as a policeman, disappeared on his way to overnight duty in the town of Vedeno, Chechnya, in the evening of 13 January 2004 after groups of armed men had repeatedly been looking for him during the preceding days. When Ms Saydulkhanova's husband found out the next morning that his son was missing, he immediately started searching for him. On 15 January 2004 Ms Saydulkhanova complained about her son's disappearance to the Vedeno department of the interior, which refused to open a criminal investigation. In April 2004 the supervising prosecutor overruled that decision and ordered a criminal investigation. The investigation was subsequently suspended and resumed on several occasions. The proceedings remain pending. There has been no news of Ms Saydulkhanova's son since the spring of 2004, when an unidentified serviceman told an acquaintance of Ms Saydulkhanova that he had been detained in a basement together with her son.

Relying on Article 2 (right to life), Ms Saydulkhanova complains that her son disappeared after having been detained by State officials and that the national authorities failed to carry out an effective investigation into the matter. She also complains of a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 5 (right to liberty) on account of the mental suffering caused to her by the disappearance of her son and the unlawfulness of his detention. Finally, she complains that she did not have an effective remedy at national level in respect of those complaints, in violation of Article 13 (right to an effective remedy).

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.

Anthoon v. Belgium (no. 60191/10)
De Vliegher v. Belgium (no. 1351/13)
Feher v. Belgium (no. 48667/10)
Pacula v. Belgium (no. 68495/12)
Kukavica v. Croatia (no. 79768/12)
N.Z. v. Croatia (no. 2140/13)
Kuokkanen and Johannesdahl v. Finland (no. 38147/12)
Lambrich v. Germany (no. 15928/14)
Grigoriadis and Others v. Greece (nos. 13361/14, 40158/14, 43729/14, 54976/14, 55928/14, and 57326/14)
Huszar v. Hungary (no. 8464/12)
Toth v. Hungary (no. 3187/08)
Fortuna v. Hungary (no. 15431/14)
Kurtan v. Hungary (no. 7913/13)
Vizsy v. Hungary (no. 56284/09)
Xuereb v. Malta (no. 60634/12)
The American Jewish Joint Distribution Committee v. the Republic of Moldova (no. 44298/09)
K.O.J. v. the Netherlands (no. 7149/12)
Q.A. v. the Netherlands (no. 23816/08)
Chabowski v. Poland (no. 15576/14)
Dabrowski v. Poland (no. 8286/13)
Dykban v. Poland (no. 38211/13)
Nowak v. Poland (no. 29522/13)
Pertkiewicz v. Poland (no. 1259/13)
Przybylski v. Poland (no. 8951/14)
Steinke v. Poland (no. 63797/12)
Werner v. Poland (no. 11378/12)

Wozniak v. Poland (no. 8988/13)
Antunes v. Portugal (no. 28573/14)
Correia Iglesias Da Silva v. Portugal (no. 27074/14)
Costa Rodrigues v. Portugal (no. 57805/13)
Da Silva Caravela v. Portugal (no. 13950/14)
Franco Machado Sottomayor De Carvalho Braga v. Portugal (no. 27078/14)
Queijinho Rato Leao and Others v. Portugal (no. 29623/14)
Sandu v. Portugal (no. 53894/12)
Santos Ramos v. Portugal (no. 11307/14)
Silva Lourenco v. Portugal (no. 66476/13)
Soares v. Portugal (no. 21117/14)
Vidarmonia - Produtos Naturais, Lda v. Portugal (no. 67073/13)
Vilanorte Construcoes, Lda v. Portugal (no. 27538/14)
Flore v. Romania (no. 52327/13)
Gagiu v. Romania (no. 27903/09)
Raileanu v. Romania (no. 67304/12)
Shiman v. Romania (no. 12512/07)
Afonichev v. Russia (no. 26344/06)
Danilenko and Shumikhin v. Russia (no. 44959/09)
Gorshenin and Others v. Russia (nos. 57401/09, 27719/12, 3542/13, 64372/13, and 78928/13)
Kuptsova and Baranov v. Russia (nos. 26264/12 and 24781/13)
Anastasova and Others v. Serbia (no. 5548/12 and 28 other applications)
Dimitric v. Serbia (no. 41239/12)
Dzuverovic v. Serbia (no. 55396/08)
Elmos Eling v. Serbia (nos. 21544/09, 52456/12, 61436/12, and 16057/13)
Filipovic and Others v. Serbia (nos. 62412/10, 62949/10, 63116/10, 63161/10, and 64933/10)
Hanusa v. Serbia (no. 56538/13)
Ilic v. Serbia (no. 42754/13)
Petrovic v. Serbia (no. 43700/14)
Sijan v. Serbia (no. 21755/14)
Vulovic v. Serbia (no. 42257/11)
Harabin v. Slovakia (no. 33800/14)
Lazev and Others v. 'The former Yugoslav Republic of Macedonia' (nos. 28493/11, 65661/12, 74018/12, 5916/13, and 7198/13)
Trifunovski v. 'the former Yugoslav Republic of Macedonia' (no. 24094/11)
Cetin and Others v. Turkey (nos. 741/06, 39865/06, 46857/07, 51679/07, 30096/08, and 32796/08)
Karakas and Deniz v. Turkey (nos. 29426/09 and 34262/09)
Yesilyurt v. Turkey (no. 27749/09)
Zongur and Topcuoglu v. Turkey (no. 17909/09)

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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.