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

Press Release
issued by the Registrar of the Court

ECHR 235 (2015)
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Judgments of 7 July 2015

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

nine Chamber judgments are summarised below; for three others, in the cases of *V.M. and Others v. Belgium (application no. 60125/11), Rutkowski and Others v. Poland (nos. 72287/10, 13927/11, and 46187/11)*, and *M.N. and Others v. San Marino (no. 28005/12)*, separate press release have been issued;

two Committee judgments, 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 (*).

Shamoyan v. Armenia (application no. 18499/08)

The applicant, Radif Shamoyan, is an Armenian national who was born in 1955 and lives in Armavir (Armenia).

The case concerned her complaint of having been denied access to the Court of Cassation.

Ms Shamoyan, who is disabled and confined to a wheelchair, brought proceedings against her neighbour, seeking to have a construction for insulation dismantled which he had built inside the entrance of their block of flats, as she was planning to install a ramp for wheelchair access in its place. She was not represented by a lawyer. Later she modified her claim and asked for the construction to be allocated to her, so that she could then install the ramp in its place. A regional court dismissed her claim in July 2007 and the Civil Court of Appeal dismissed her appeal against that decision in September 2007. Ms Shamoyan lodged an appeal on points of law, still not being represented. In November 2007 she was informed by the Court of Cassation that her appeal had not been admitted for examination, as, contrary to the relevant procedural requirements, it had not been lodged by an advocate licensed to act before that court.

Relying in substance on Article 6 § 1 (right to a fair trial – access to court) of the European Convention on Human Rights, Ms Shamoyan complained that she had been denied access to the Court of Cassation since – living on a disability pension – she could not afford the services of an advocate licensed to act before that court.

Violation of Article 6 § 1

Just satisfaction: 3,600 euros (EUR) (non-pecuniary damage) and EUR 60 (costs and expenses)

[1] Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. 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

Odescalchi and Lante della Rovere v. Italy (no. 38754/07)*

The applicants, Carlo, Federico and Innocenzo Odescalchi, Giulia Odescalchi and Amelia Lante della Rovere, are five Italian nationals who were born in 1954, 1963, 1956, 1963 and 1934 respectively. They all live in Rome. They own a piece of land in Santa Marinella covering a total area of 97,938 m².

The case concerned an expropriation permit relating to the plot of land in question, accompanied by a prohibition on building.

On 12 July 1971 the municipality of Santa Marinella adopted a general development plan which set aside the land in question for a new public park, consequently prohibiting building on the site with a view to its expropriation. The plan was approved by the Region and came into force on 11 February 1975. In accordance with the applicable legislation, the expropriation permit required for the development plan expired in February 1980. Despite the expiry of the permit and the concomitant prohibition on building, the land was not unencumbered. Pending the municipality's decision on the new use to be assigned to the land in question, it was placed under the so-called "white zone" regime, with the accompanying prohibitions on building. The applicants therefore served notice on the authorities to reach a decision and to discontinue the "white zone" regime. In the absence of any reply, they applied to the regional administrative court. The court found that following the expiry of the expropriation permit in 1980 the land in question was subject to a prohibition on building which would continue until the municipality had decided on the new type of development to be assigned to the land. By a decision of 6 March 2009 the court ordered the municipality of Santa Marinella to reach a decision, and also appointed a special commissioner, a regional official, to act should the municipality fail, in breach of the court order, to reach a decision within 60 days.

On 15 June 2001, the special commissioner reached a decision, renewed the expropriation permit relating to the applicants' land and earmarked the latter for development of a new public park. He invited the municipality to quantify the compensation to be awarded to the applicants. In September 2011 the applicants appealed to the court against that decision. The proceedings are still pending.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained of the duration of the prohibition on building on their land since the date of issue of the expropriation permit.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 1,000,000 (pecuniary damage) and EUR 5,000 (non-pecuniary damage) to the applicants jointly

Kardišauskas v. Lithuania (no. 62304/12)

The applicant, Markas Kardišauskas, is a Lithuanian national who was born in 1979 and is currently serving a 13-year prison sentence in Pravieniškes Prison for several offences, including rape, murder and robbery.

The case concerned his complaint that the authorities had failed to ensure his safety in prison and that the investigation into an assault on him in prison had been ineffective.

Mr Kardišauskas was found beaten up and unconscious after being attacked by other prisoners in May 2003. Having sustained a serious head injury, he underwent an operation at an emergency hospital on the same day and remained in hospital for three months. He was subsequently declared disabled and was able to work at 90 percent again in February 2008.

On the day of the assault, a pre-trial investigation into the incident was opened. Mr Kardišauskas was questioned in September 2003. He identified a prisoner on a photo as his attacker, but prison records showed that the suspect had not been detained in the same prison on the day in question.

The investigators later questioned other prisoners, but the perpetrators of the attack could not be identified. The criminal investigation remains pending.

In October 2010 Mr Kardišauskas brought an action for damages against the State claiming in particular that the authorities had failed to protect him from ill-treatment, and later that they had failed to establish who his assailant was. His claim as to damage to his health was dismissed for having been lodged out of time by a court decision eventually upheld by the Supreme Court in June 2012.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Kardišauskas complained in particular that the authorities had failed to conduct an effective investigation into the attack.

No violation of Article 3 (investigation)

Morar v. Romania (no. 25217/06)*

The applicant, Ioan T. Morar, is a Romanian national who was born in 1956 and lives in Bucharest.

The case concerned the criminal conviction and civil liability of a journalist working for a satirical weekly for defamation against the political adviser to an electoral candidate.

In February and March 2004 Mr Morar, who is a professional journalist, published several articles in the *Academia Caţavencu* satirical weekly magazine in the context of the 2004 presidential elections. The articles concerned, among others, V.G., who was political adviser to a potential candidate at the time. On 26 April 2004 V.G. lodged a criminal complaint with the court against three journalists from the satirical weekly, including Mr Morar, for defamation. The court acquitted Mr Morar.

On 23 December 2005 the County Court upheld V.G.'s appeal on points of law and sentenced Mr Morar to a criminal fine, suspended. The court further sentenced the journalist to pay civil damages to V.G. for the non-pecuniary damage he had suffered, totalling 10,000 US dollars (USD), plus USD 16,000 in costs and expenses. The company publishing the *Academia Caţavencu* satirical weekly was declared civilly liable jointly and severally with Mr Morar. The County Court held that the journalist had committed defamation by "indirect intention".

Relying in particular on Article 10 (freedom of expression), Mr Morar alleged that his freedom of expression had been impeded.

Violation of Article 10

Just satisfaction: EUR 18,445 (pecuniary damage) and EUR 6,000 (non-pecuniary damage)

Just satisfaction

Bittó and Others v. Slovakia (no. 30255/09)

The applicants are 21 Slovakian nationals who were born between 1923 and 1977. 20 of them live in Slovakia and one lives in the Czech Republic. The case concerned the applicants' complaints that rent controls on properties owned by them restricted their right to peacefully enjoy their possessions. The applicants are owners or co-owners of residential buildings in Bratislava and Trnava to which the rent-control scheme applied, or has applied. They obtained the ownership of the flats by various means, such as restitution, donation or inheritance from their relatives to whom the flats had been restored. The majority of the applicants acquired ownership in the course of the 1990s. The flats in these houses were mostly occupied by tenants, who paid the new owners a rate of rent regulated by the government and whose eviction was practically impossible. The applicants complained that the rent they received was a fraction of what they would obtain if the flats were made available on the open market. Furthermore, they alleged that the regulated rate of rent was not even sufficient to cover the costs of maintenance and repairs. Relying in particular on Article 1 of Protocol No. 1

(protection of property), the applicants complained that the rent controls had breached their right to peaceful enjoyment of their possessions.

In its principal judgment of 28 January 2014 the Court found a violation of Article 1 of Protocol No. 1.

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

Just satisfaction: The Court awarded the applicants EUR 2,170,000 in respect of pecuniary and non-pecuniary damage, and EUR 79,922 in respect of costs and expenses.

Gürtaş Yapı Ticaret Ve Pazarlama A. Ş. v. Turkey (no. 40896/05)*

The applicant company, Gürtaş Yapı Ticaret ve Pazarlama A.Ş., is a limited liability company dealing with real estate under Turkish law and is based in Istanbul.

The case concerned the company's claim for pecuniary compensation for the damage caused by an erroneous entry in the land register concerning the area of a piece of land purchased by the company.

The company decided to purchase from private individuals various sections of a plot of land held in joint ownership in Aliağa. During the sale, 49 m² of land was expropriated in order to erect electricity pylons. The land register was amended accordingly, mentioning an area of 485,151 m². On 25 November 1998 the local branch of the Land Registry informed the company, which now owned the land, of an amendment made to the land register owing to an erroneous entry: the actual area of the land purchased was 201,951 m², rather than 485,151 m². The company carried out an on-the-spot inspection and had the land surveyed. Since the total area surveyed tallied with the area as corrected in the land register, it decided not to challenge the correction to the register.

On 29 November 1999 the company applied to the court to declare the State liable for the damage caused by its handling of the land registers. The court considered that the damage suffered by the applicant company had stemmed from mismanagement of the land registers and that the State was therefore liable for it. The court ordered the State to pay the company a sum which corresponded to approximately 45,000 euros (EUR) at the time. The State appealed on points of law against that judgment. The judgment was quashed and the case referred to the court, which this time ruled that the State was not liable, inasmuch as the map accompanying the relevant folio in the land register had shown the actual area of the land, and the applicant company could not have overlooked the difference between the area entered in the folio and that shown on the map. The appeal on points of law lodged by the company was dismissed by the Court of Cassation.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), the applicant company complained of an interference with its right to respect for its property.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 60,700 (pecuniary damage) and EUR 3,220 (costs and expenses)

Sarıdaş v. Turkey (no. 6341/10)*

The applicant, Bayram Sarıdaş, is a Turkish national. He was born in 1962 and lives in Gaziantep.

The case concerned proceedings to challenge a medical assessment before the Supreme Military Administrative Court.

In 2006 Mr Sarıdaş was registered for compulsory military service. He presented the doctors at the neurology service at the GATA Military Hospital with a medical report drawn up on 5 October 2001 by the Institute of Forensic Medicine, indicating that he suffered from Wernicke-Korsakoff syndrome. After having examined the patient and conducted various analyses, the neurologists

concluded that Mr Sarıdaş was no longer suffering from the aforementioned illness. He was also subjected to a psychiatric examination, from which the medical officers concluded that Mr Sarıdaş was fit for military service.

Mr Sarıdaş did not challenge the medical decision, but failed to attend the National Service Centre for enrolment. He was declared wanted for desertion.

On 28 August 2007 Mr Sarıdaş applied to the Ministry of Defence for exemption from his military obligations for reasons of unfitness for service. On 28 September 2007 the National Service Centre dismissed that application. On 27 November 2007 Mr Sarıdaş brought proceedings against the Ministry of Defence before the Supreme Military Administrative Court and requested a medical assessment from the Health Board of the GATA Military Hospital. The Health Board, which comprises 12 military doctors, issued its provisional report on 3 July 2008, concluding with a declaration that Mr Sarıdaş was fit for military service.

Mr Sarıdaş was never sent the copy of the Health Board's final report which he had requested. Appearing before the Supreme Military Administrative Court, Mr Sarıdaş complained of the fact that he had not received the report, contending that the Military Hospital Health Board was neither independent nor impartial. He argued that a medical report should be commissioned from a university hospital or the Institute of Forensic Medicine. At the close of a hearing on 2 July 2009 the Supreme Military Administrative Court dismissed Mr Sarıdaş' requests on the basis of the medical assessments issued by the GATA Military Hospital.

Relying on Article 6 § 1 (right to a fair trial), Mr Sarıdaş submitted that he had not benefited from a fair hearing before the Supreme Military Administrative Court. He complained of the failure to forward the final report prepared by the GATA Military Hospital Health Board, alleging that this had deprived him of the opportunity to respond to the findings of that report before challenging them.

Violation of Article 6 § 1

Just satisfaction: EUR 4,000 (non-pecuniary damage) and EUR 1,000 (costs and expenses)

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