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 17 judgments on Tuesday 12 January 2021 and 58 judgments and / or decisions on Thursday 14 January 2021.

*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 12 January 2021

Munir Johana v. Denmark (application no. 56803/18)
Khan v. Denmark (no. 26957/19)

These cases concern the applicants' expulsions from Denmark being ordered following repeated convictions for various criminal offences, despite their having lived there since a young age.

The applicant in the first case, Marsel Munir Johana, is an Iraqi national who was born in 1994 and lives in Silkeborg (Denmark). The applicant in the second case, Shuaib Khan, is a Pakistani national who was born in 1986. The applicant in the second case was born in Denmark, while the applicant in the first case came to live there at the age of four.

Both applicants had had a criminal record for many years before the events in question. Convictions were for, among other things, violent, drugs, and driving offences, and offences while in prison.

In 2016 the applicant in the first case was charged in connection with violent offences. The prosecution asked for the applicant to be expelled from Denmark (he had two previous conditional expulsion orders against him). The Danish Immigration Service agreed that that would be the correct course of action. He was convicted. His expulsion and a six-year re-entry ban were ordered. That decision was upheld on appeal by the Western Denmark High Court and the Supreme Court and finally sentenced to six months' imprisonment. The Supreme Court referred to, in particular, the applicant's repeated offences as an adult and the likelihood he would reoffend, considering that those factors were weightier than the applicant's strong ties to Denmark. Following the first-instance expulsion decision he was convicted of another unrelated drugs offence.

On 25 August 2017 the applicant in the second case was charged with threatening a police officer and not having the right residence permit, alongside other offences. He was given a prison sentence and a fine, and a two-year suspended expulsion order. The City Court referred to his leadership of a criminal gang, his numerous convictions for other offences, his lack of a dependent family, and the need to prevent disorder. In 2018 that decision was upheld by the High Court of Eastern Denmark and the Supreme Court, with a final sentence of three months' imprisonment and a 12,200 Danish kroner fine. His expulsion and a six-year re-entry ban were also ordered. It appears that the applicant was released from pre-trial detention in October 2017 and left Denmark soon afterwards.

Relying on Article 8 (right to respect for private life) of the European Convention on Human Rights, the applicants complain separately that the decisions to expel them from Denmark breached their rights.

L.B. v. Hungary (no. 36345/16)

The applicant, Mr L.B., is a Hungarian national who was born in 1966 and lives in Budapest.

The case concerns the tax authorities' publishing of his personal data on the Internet for failure to pay taxes.

On 27 January 2016 the National Tax and Customs Authority published the applicant's personal details on a list of tax defaulters on its website, as provided for under the relevant domestic law in respect of those individuals whose tax arrears and debts exceeded 10 million Hungarian forints.

The information published included the applicant's name, home address, tax identification number and the amount of unpaid tax which he owed.

He subsequently also appeared on a list of "major tax evaders" on the tax authorities' website, while an online media outlet produced an interactive map of tax defaulters indicating his home address with a red dot.

Relying on Article 8 (right to respect for private and family life and the home) of the European Convention, the applicant alleges that the publication of his name and other details on the tax defaulters' list was not necessary, arguing that the main reason for it was to publicly shame him.

Albuquerque Fernandes v. Portugal (no. 50160/13)

The applicant, Cristina Maria Albuquerque Fernandes, is a Portuguese national who was born in 1963. She lives in Coimbra (Portugal). At the relevant time she was a judge.

The case concerns disciplinary proceedings brought against Ms Albuquerque Fernandes, at the close of which the High Council of the Judiciary (HCJ) decided to impose compulsory retirement (*aposentação compulsiva*).

In February 2011 the HCJ opened disciplinary proceedings against Ms Albuquerque Fernandes. In particular, she was accused of having taken with her case files for which she had been responsible at Alcobaça Court, when she was transferred to Leiria Court in September 2010, and of failing to return them.

In April 2011 the judicial investigator invited Ms Albuquerque Fernandes to return the case files in question to her. Having received no positive response, the judicial investigator informed the HCJ, which decided to impose a 30-day temporary suspension measure.

In July 2011 the judicial investigator drew up an indictment, accusing Ms Albuquerque Fernandes of breaching her duty to act with zeal and to obey the HCJ's instructions, preventing the administration of justice and irretrievably damaging the prestige of the judiciary and the image of Alcobaça Court. Among other charges, Ms Albuquerque Fernandes was accused of: falling behind in dealing with files, including urgent ones; failing to give rulings in 210 cases; having taken 19 sets of files when she left Alcobaça Court, without requesting authorisation from the HCJ and without informing the president or the registrars of that court; and having returned these files only after the HCJ had suspended her from her functions and without having ruled on the cases in question.

In September 2011 Ms Albuquerque Fernandes submitted her defence and denied the charges. She alleged, among other points, that she had informed the registrars of the court that she was taking with her certain files when she left that court; she added that she was suffering from health problems and from anxiety.

In December 2011 the HCJ, sitting in plenary, gave its decision and imposed the penalty suggested by the judicial investigator, namely the compulsory retirement of Ms Albuquerque Fernandes.

Between 2012 and 2013 Ms Albuquerque Fernandes lodged appeals before the Judicial Division of the Supreme Court and before the Constitutional Court, without success.

Relying on Article 13 (right to an effective remedy) of the Convention, Ms Albuquerque Fernandes submits that the Constitutional Court was excessively formalistic, and that this led to the inadmissibility of her constitutional appeal.

Relying on Article 6 (right to a fair hearing), Ms Albuquerque Fernandes complains that she had learned of the penalty applicable in the disciplinary proceedings against her only when the HCJ issued its decision, and that she was unable to defend herself in this regard.

Gheorghe-Florin Popescu v. Romania (no. 79671/13)

The applicant, Gheorghe-Florin Popescu, is a Romanian national who was born in 1971 and lives in Bacău (Romania).

The case concerns the domestic authorities' decision to order the applicant, a journalist, to pay damages for having published five posts on his blog, criticising L.B., another journalist who was the editor-in-chief of a newspaper in the Desteptarea media group and programme director for a local television channel belonging to the same group.

In 2011 Mr Popescu, a journalist, published on his blog (www.aghiuta.com) a series of articles targeting L.B., who brought civil proceedings before the Bacău first-instance court. On 11 April 2012 the court partly allowed L.B.'s action and ordered Mr Popescu to pay 5,000 Romanian lei (about 1,100 euros) in respect of non-pecuniary damage.

The court considered that in the articles posted on 7 July and 18 August 2011 Mr Popescu had, without any factual basis, described L.B. as morally responsible for a murder-suicide. With regard to the articles posted on 15 January, 8 July and 4 August 2011, the court held that vulgar and defamatory expressions had cast a slur on L.B.'s honour and reputation.

Mr Popescu lodged an appeal. The county court dismissed this appeal and endorsed the findings of the court of first instance, namely that the accusations in respect of L.B. were without factual basis and thus exceeded the limits of freedom of expression.

Mr Popescu lodged a further appeal with the Bacău Court of Appel against that decision. By a judgment of 17 June 2013, the court of appeal dismissed the appeal as unfounded. It held that Mr Popescu had not denied that he administered the site in question and that in any event, the claims made in the impugned articles were defamatory and insulting in nature and exceeded the limits of freedom of expression, which gave rise to his liability in tort, in accordance with Articles 998 and 999 of the Civil Code.

Relying on Article 10 (freedom of expression), the applicant alleges that by awarding civil damages against him for having posted five articles on a blog administered by him the domestic courts breached his right to freedom of expression.

Mihail Mihăilescu v. Romania (no. 3795/15)
Victor Laurențiu Marin v. Romania (no. 75614/14)

The cases mainly concern a new procedural step introduced in 2014 into the preliminary stage of criminal proceedings, involving a pre-trial judge having to decide whether to commence a criminal trial in a case.

The applicant in the first case, Mihail Mihăilescu, is a Romanian national who was born in 1971 and lives in Bucharest.

In March 2013 Mr Mihăilescu brought criminal proceedings against his former mother-in-law for perjury. He argued that she had lied before the courts during his divorce proceedings, when stating that he had behaved inappropriately towards his wife.

A senior prosecutor closed the proceedings in August 2014. She was of the view that there was insufficient evidence to establish with any certainty whether the applicant's former mother-in-law was guilty. She considered that the mother-in-law had been in a better position than the other witnesses in the case to know about arguments or threats between the former couple.

This decision was upheld on appeal by the District Court – sitting as a pre-trial judge, in chambers and without the parties being present – in an interlocutory judgment of November 2014 which was not amenable to appeal.

Mr Mihăilescu brought general tort proceedings against his former mother-in-law, but the outcome of the proceedings is not known.

The applicant in the second case, Victor Laurențiu Marin, is a Romanian national who was born in 1968 and also lives in Bucharest.

Mr Marin's father died in a road traffic accident on 11 March 2011. The police immediately started an investigation, taking photographs of the scene of the accident, identifying the driver and an eyewitness and collecting evidence.

After repeated technical reports produced at the applicant's request, in December 2013 a prosecutor discontinued the criminal prosecution of the case. She held that the driver could not have avoided the accident; the applicant's father had been responsible because he had attempted to cross a busy road in an unauthorised location.

By an interlocutory judgment of May 2014 which was not amenable to appeal, the District Court, sitting as a pre-trial judge, dismissed the applicant's appeal against the prosecutor's office's decisions on the grounds that the offence of involuntary manslaughter had not been made out. The applicant's challenges to the interlocutory judgment were in vain.

In September 2014 the courts ordered Mr Marin to pay damages for his father's actions in civil proceedings brought against him by the Bucharest public transport company.

Relying on Article 6 § 1 (right to a fair trial), both applicants allege that the proceedings before the pre-trial judge were unfair because they took place in chambers, without the parties being present. Mr Mihăilescu complains in particular that he was thus not able to rebut his mother-in-law's arguments, while Mr Marin complains that the judge ruled that his father had been responsible for the accident, even though that judge had not acted as a trial court.

Mr Marin also complains that the criminal investigation into his father's accident and the proceedings before a pre-trial judge – which confirmed the public prosecutor's decision not to prosecute – were ineffective and excessively lengthy, in breach of Article 2 (right to life).

Lastly, Mr Marin complains under Article 13 (right to an effective remedy) that he did not have access to an effective remedy for his complaints, because the procedure for an appeal against a public prosecutor's decision not to prosecute, as introduced in 2014, could not have ended in the case being sent for trial.

Svilengaćanin and Others v. Serbia (no. 50104/10 and nine other applications)

The applicants are 11 Serbian nationals who have submitted ten applications in total. They live in various locations in Serbia. All the applicants are or were service personnel, at the relevant time of the Yugoslav Army or the successor Army of the State Union of Serbia and Montenegro.

The case concerned court proceedings in respect of the applicants' pay as military personnel, in particular, alleged partiality on the part of the Supreme Court.

The applicants contacted the Ministry of Finance on 10 September 2002 as they considered that the Ministry of Defence had miscalculated their salaries. According to confidential reports of the Ministry of Defence of 7 February 2003 and 20 March 2006, military salaries for 2001 and 2002 were not calculated in accordance with the relevant domestic law.

The applicants in seven cases brought administrative claims, but their military units declined jurisdiction. According to the applicants, many service personnel appealed unsuccessfully, while two applied for judicial review of those decisions. The Supreme Military Court declined jurisdiction in the

two cases on judicial review, finding that it was a civil-law issue. The applicants did not pursue their administrative claims in the light of this.

Between 2003 and 2007 the applicants lodged civil claims, seeking redress (they assert that more than 20,000 military personnel have similarly brought claims). Between 2005 and 2009 the applicants were successful before the civil courts. The applicants aver that 910 first-instance judgments were delivered in favour of plaintiffs in situations similar to theirs.

The first-instance courts asked the Supreme Court for an opinion and guidance on the question of jurisdiction so as to harmonise domestic case-law. The Supreme Court in 2005 found administrative claims to be the more appropriate remedy for rights to and amounts of salary. Ultimately the applicants' cases came before the Supreme Court, which ruled that the cases should have been handled in administrative proceedings. The Constitutional Court rejected constitutional complaints lodged by the applicants.

On an unspecified date before March 2004 a meeting took place between a representative of the Ministry of Defence – later a defendant in the applicants' cases – and senior judges to discuss how to deal with the volume of legal cases and damages, allegedly resulting in the civil courts changing their practice in cases similar to the applicants' and the applicants' themselves.

Relying in particular on Article 6 (right to a fair trial) of the Convention, the applicants complained that the Supreme Court had not been an impartial tribunal in view of the meeting with a Ministry official and that the case-law had been inconsistently applied by the domestic courts.

Ryser v. Switzerland (no. 23040/13)

The applicant, Jonas Ryser, is a Swiss national who was born in 1983.

The case concerns the fact that Mr Ryser was ordered to pay the military-service exemption tax although he had been declared unfit for military service.

In October 2004 the relevant authorities declared Mr Ryser unfit for military service on health grounds. In consequence, with the exception of the two days spent in recruitment selection, he did not perform any period of military service. However, he was declared fit for the civil protection service.

In February 2010 the Office for Civil Security, Sports and Military Affairs in the Canton of Berne ordered Mr Ryser to pay the military-service exemption tax; the amount payable for 2008 was 254,45 Swiss francs (CHF).

In March 2010 Mr Ryser lodged an objection against that decision and asked to be exonerated from the tax. He argued that since his exemption from military service had been based on medical grounds he could not perform either the military service or the civilian alternative service. The Office dismissed the applicant's objection.

In December 2011 Mr Ryser was informed that he was being assigned to the civil protection reserve and was exempted from the induction course. Relying in substance on the same arguments as in his opposition, he applied to the Cantonal Tax Appeals Board, but his appeal was dismissed.

Mr Ryser subsequently took the case to the Federal Supreme Court, by way of a public-law appeal. He asked the Federal Supreme Court to set aside the decision taken by the Office and the Board and to hold that collection of the exemption tax would in his case result in discrimination and should not be enforced. In November 2012 the Federal Supreme Court dismissed this appeal.

Following a change of residence, Mr Ryser was assigned to the Civil Protection Reserve of the City of Berne. He was informed by a letter of 6 February 2013 that, in principle, he would not be required to perform this service. On 31 December 2013 he was definitively released from military service.

Relying on Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life), Mr Ryser claims that he has been the victim of discrimination on account of his health status.

Thursday 14 January 2021

Fariz Ahmadov v. Azerbaijan (no. 40321/07)

The applicant, Fariz Alam oglu Ahmadov, was an Azerbaijani national who was born in 1971 and lived in Mingachevir (Azerbaijan). The applicant died on 13 October 2015. His mother chose to continue his application in his stead.

The application concerns the fairness of the criminal proceedings that led to the applicant's conviction for drugs offences.

On 7 March 2005 a certain A.S. was arrested in connection with possession of drugs. He stated that he had bought the drugs from the applicant. The substance originally seized was 0.24 grams of marijuana. On 10 March 2005 the applicant was charged. He was apprised of his rights, but signed a handwritten waiver of his right to a lawyer. Further investigative steps, including a confrontation and questioning, were carried out, without the applicant's having counsel present.

The applicant's pre-trial detention was extended several times.

On 5 August 2005 A.S. stated in the course of a confrontation that he had received manure, rather than marijuana, from the applicant. He later changed that testimony in the absence of the applicant.

Following his indictment, the applicant applied to have the case discontinued and returned to the prosecutor for a fresh investigation, which was successful. On 29 December 2005 the applicant was again indicted. In the meantime A.S. had died, so the trial court read out one of his statements, which affirmed that the applicant had given A.S. marijuana. The applicant was found guilty. An appeal by the applicant was dismissed, without his specific complaints being examined. That judgment was upheld by the Supreme Court, which stated that the applicant had not complained of unlawfully obtained evidence during the investigation, only before the courts.

Relying on Article 6 (right to a fair trial), the applicant complains that his conviction breached his rights as it was based on a confrontation that took place without his lawyer present.

Sabalić v. Croatia (no. 50231/13)

The applicant, Pavla Sabalić, is a Croatian national who was born in 1982 and lives in Zagreb.

The case concerns Ms Sabalić's allegation that the authorities' response to a violent homophobic attack against her was inadequate.

On 13 January 2010 Ms Sabalić was attacked in a Zagreb nightclub by a man, M.M., when she refused his advances, adding that she was a lesbian. He severely beat and kicked her, while shouting 'All of you should be killed!' and 'I will f… you, lesbian!'. She sustained multiple injuries all over her body for which she was treated in hospital.

The aggressor was convicted in minor-offence proceedings of breach of public peace and order and given a fine of 300 Croatian kunas (approximately 40 euros).

Ms Sabalić, who had not been informed of those proceedings, lodged a criminal complaint against M.M. before the State Attorney's Office, alleging that she had been the victim of a violent hate crime and discrimination.

The State Attorney's Office instituted a criminal investigation, but eventually rejected the criminal complaint in July 2011 because M.M. had already been prosecuted in the minor-offence proceedings

and his criminal prosecution would therefore amount to double jeopardy. The domestic courts upheld this decision.

Relying on Article 3 (prohibition of inhuman or degrading treatment) in conjunction with Article 14 (prohibition of discrimination), Ms Sabalić complains that the official response to the attack on her, namely minor-offence proceedings, had not addressed the hate-crime element and had led to impunity for her aggressor. She also relies on Article 13 (right to an effective remedy).

'Société Éditrice de Mediapart' and Others v. France (nos. 281/15 and 34445/15)

The two cases concern an order issued against Mediapart, a news website, its director of publication and a journalist to remove from the news company's website the transcripts of illegal recordings made at the home of Ms Bettencourt, principal shareholder of the group L'Oréal.

In application no. 281/15, the applicants are the newspaper publisher Mediapart, Mr Hervé Edwy Plenel, chairperson and publishing director of that publication, and Mr Fabrice Arfi, a journalist at Mediapart. Mr Plenel and Mr Arfi are French nationals who were born in 1952 and 1981 respectively and live in Paris. In application no. 34445/15, the applicants are Edwy Plenel and Mediapart.

In the course of 2009 a dispute arose between Ms Bettencourt and her daughter concerning large financial gifts, in particular to B., a writer and photographer. The case was widely reported in the press. Having been informed that Ms Bettencourt's daughter had handed over to the national financial police brigade CD-ROMs containing recordings made of conversations at her mother's home between May 2009 and May 2010 by the latter's former butler, P.B., the applicants decided to publish extracts from these recordings online between 14 and 21 June 2010.

Application no. 281/15 – urgent proceedings against the applicants by P.D.M.

On 21 June 2010 P.D.M. – Ms Bettencourt's financial manager – brought urgent proceedings against the applicants, seeking, on the basis of Article 809 of the Code of Civil Procedure (CPC) and Articles 226-1 and 226-2 of the Criminal Code, to obtain an order that all the extracts of the illegal recordings made at Ms Bettencourt's home were to be removed from Mediapart's internet site and an order that Mediapart was not to publish these recordings, subject to a penalty of EUR 10,000 per hour of publication and per extract. He also sought an order that the respondents were to pay him, jointly, the sum of EUR 20,000.

On 1 July 2010 the President of the Paris *tribunal de grande instance* (TGI) dismissed his claims, noting that the published transcripts concerned B.'s conduct and his relationship with Ms Bettencourt, which constituted the background to the Bettencourt case, but also and primarily the management of her fortune and her possible ties to the political authorities.

The President of the TGI concluded that ordering the removal of documents corresponding to the publication of legitimate information that was of relevance to the general interest would amount to censorship that was contrary to the public interest. By a judgment of 23 July 2010, the Paris Court of Appeal upheld the order issued by the President of the Paris TGI on 1 July 2010, holding that the sole fact that the published statements had been recorded without the consent of the speaker was not in itself sufficient to characterise the harm caused by their publication as manifestly unlawful, but that they must nevertheless have "intrude[d] on the privacy of others" as set out in Article 226-1 of the Criminal Code.

P.D.M. appealed on points of law against that judgment. On 6 October 2011 the Court of Cassation quashed the Court of Appeal's judgment and remitted the case to the Versailles Court of Appeal.

By a judgment of 4 July 2013, the Versailles Court of Appeal set aside the order of 1 July 2010 and ordered the applicants to remove from Mediapart's site all transcripts of the illegal recordings made in Ms Bettencourt's home and to pay P.D.M. an advance of EUR 1,000 in compensation for his non-pecuniary damage.

The applicants appealed on points of law. In a judgment delivered on 2 July 2014, the Court of Cassation dismissed that appeal. It considered, firstly, that the findings in the appeal judgment established that the statements as published constituted an interference with private life, and added, secondly, "... the [court of appeal's] judgment, after reiterating that Article 10 of the Convention provides that the freedom to receive and impart information may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the rights of others in order to prevent the disclosure of confidential information, finds in precise terms that this is particularly so with regard to the right to respect for private life, itself explicitly affirmed by Article 8 of the same Convention, which further extends its protection to every person's home…". It considered that the publication of the recordings by the applicants could not be justified by "press freedom or its alleged contribution to a public-interest debate, or [by] a concern to give particular credibility to certain information, which was moreover capable of being established by investigation and analysis, protected under journalists' privilege of non-disclosure of sources". Lastly, it held that the penalty was proportionate to the offence committed, in spite of the fact that the content of the recordings had been disseminated by other news media.

Application no. 34445/15 – urgent proceedings against the applicants by Ms Bettencourt

On 22 June 2010 Ms Bettencourt made an urgent application to the courts, on the same basis as P.D.M. in application no. 281/15, seeking to have the extracts from the illegal recordings removed from the site and a ban on their further publication. She asked that the applicants be ordered to pay her EUR 50,000.

By an order of 1 July 2010, upheld by the Paris Court of Appeal on 23 July 2010, the President of the Paris TGI dismissed Ms Bettencourt's claims for the same reasons as those set out above with regard to application no. 281/15. Ruling on an appeal on points of law lodged by Ms Bettencourt, the Court of Cassation, in a judgment of 6 October 2011, quashed the Court of Appeal's judgment and remitted the case to the Versailles Court of Appeal. In a judgment delivered on 4 July 2013, the Versailles Court of Appeal set aside the order of the President of the Paris TGI of 1 July 2010, essentially in the same terms as in the previous application, ordered the removal of the disputed texts and prohibited the further publication of all or any of the illegal recordings made in Ms Bettencourt's home. It ordered the applicants jointly to pay Ms Bettencourt an advance of EUR 20,000 in respect of compensation for her non-pecuniary damage.

The applicants appealed on points of law. In a judgment of 15 January 2015, the Court of Cassation indicated that the breach of Ms Bettencourt's privacy, "which is not justified by the fact of providing information to the public" lay, as the court of appeal's judgment had noted, in the fact that the published recordings, in addition to being made over the course of a year, had been made at Ms Bettencourt's home, without her knowledge and with full awareness of their illicit origin.

Criminal proceedings brought against the applicants

On 30 August 2013 the investigating judge ordered that P.B., who had made the recordings, be committed for trial at the Bordeaux Criminal Court under Article 226-1 of the Criminal Code. Mr Plenel, Mr Arfi and other journalists from the magazine *Le Point* were committed for trial before the same court under Article 226-2 of the Criminal Code. By a judgment of 12 January 2016, they were all acquitted. By a judgment delivered on 21 September 2017, on an appeal by the public prosecutor, the Bordeaux Court of Appeal upheld the judgment. It concluded that in publishing the contested extracts and the accompanying commentary which placed them in context, it had not been the applicants' intention to infringe on Ms Bettencourt's privacy.

Relying on Article 10 (freedom of expression), the applicants allege that the court order obliging them to remove from Mediapart's news site the extracts of the illegal recordings made in Ms Bettencourt's home breached their right to freedom of expression.

E.K. v. Greece (no. 73700/13)

The applicant, Mr E.K., is a Turkish national who was born in 1985.

The case concerns the conditions of the applicant's detention in the Soufli and Feres border posts, the Attica sub-directorate for aliens (Petrou Ralli) and the Amygdaleza detention centre, the lawfulness of his detention, and whether the review of the lawfulness of that detention was effective.

On 19 June 2013 Mr E.K., who had entered the country illegally, was arrested by officers from the Soufli border post and brought before the prosecutor at the Alexandroupolis Criminal Court, which imposed a two-year suspended prison sentence. On 21 June 2013 he was placed in pre-trial detention, for an initial duration of three days, with a view to his deportation from the country.

While in detention he submitted an asylum claim, which was transferred to the Attica regional asylum services on 22 June 2013. On the same day the head of the Alexandroupolis police force decided to extend E.K.'s detention pending the decision on his asylum claim, for an initial maximum period of 90 days after submission of that claim. On 26 June 2013 E.K.'s detention was extended on the grounds that he was likely to abscond, for a maximum period of six months.

E.K. was then transferred, first to the premises of the Feres border post, then to the premises of the Attica sub-directorate for aliens, where it was decided on 23 July 2013 to extend his detention for a period of 90 days; he was notified of that decision "in the Syrian language", a language that he did not understand. On the same date, this decision was amended in order to reflect the new duration of his detention, now limited to six months, and his asylum interview took place. Mr E.K. was then transferred to the Amygdaleza detention centre.

On 31 July 2013 E.K. challenged the decision of 26 June 2013 before the Piraeus Administrative Court, but subsequently withdrew that appeal. On 1 August 2013 he challenged the decision of 26 June 2013 before the Athens Administrative Court of First Instance, which dismissed his appeal on the grounds that detention was necessary for speedy and effective examination of the asylum claim and to prevent him from absconding. Shortly afterwards E.K. challenged the decisions of 23 July 2013 and 21 June 2013 before the Athens Administrative Court. He also complained about his conditions of detention. His appeals were rejected.

On 10 December 2013 E.K. was granted refugee status and was released three days later.

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant complains about his conditions of detention in the various premises in which he was held. Under Article 5 § 1 (right to liberty and security), he alleges that his detention was arbitrary. Lastly, relying on Article 5 § 4 (right to a speedy review of the lawfulness of detention), the applicant maintains that the judicial review of his detention was ineffective.

Kargakis v. Greece (no. 27025/13)

The applicant, Kleanthis Kargakis, is a Greek national who was born in 1950 and lives in Thessaloniki (Greece).

The case concerns the medical care received by the applicant during his pre-trial detention and his conditions of detention in Diavata Prison, the lack of an effective remedy in this respect and the length of the procedure for judicial review of the lawfulness of his detention.

On an unspecified date criminal proceedings were brought against Mr Kargakis for attempting to assist a foreign national to leave the country without the latter having submitted himself to the relevant controls, by a person acting in the exercise of his profession and with a combination of offences. On 16 January 2013 Mr Kargakis was arrested and placed in pre-trial detention on the basis of a warrant issued by the investigating judge at the Thessaloniki Criminal Court. On 7 February 2013 he was placed in Diavata Prison in Thessaloniki.

While being admitted to pre-trial detention, Mr Kargakis stated that he had already suffered a stroke and had a history of diabetes and heart disease, and that he was taking medication. In the course of the detention he was examined by the prison psychiatrist, who diagnosed reactional self-destructive depression and placed him under psychiatric care. On 24 January 2013 Mr Kargakis was rushed to the Papanikolaou General Hospital in Thessaloniki, suffering from a probable stroke. His health improved while in hospital, and he was discharged on his own initiative on 6 February 2013, with strict recommendations as to his diet and environment in prison. He was required to return to hospital for emergency care on two occasions in March and left the hospital for prison on 9 April 2013.

Mr Kargakis, who is a wheelchair-bound diabetic, alleges that in Diavata Prison he shared a cell measuring 20m^2 with four other prisoners; the cell was unsanitary and not adapted to the needs of people with disabilities. He also submits that the food was unsuitable for his health conditions. In addition, he claims that he was unable to benefit from the authorised exercise periods because the courtyard was neither sheltered nor adapted for persons with disabilities.

On 18 February 2013 Mr Kargakis lodged an appeal with the judge against the order of 16 January 2013 placing him in pre-trial detention. Following several requests by the applicant to speed up the examination of his appeal, the prosecutor at the first-instance court prepared his opinion for the investigating judge on 15 April 2013, suggesting that the detention order against the applicant be lifted and replaced by other restrictive measures. The investigating judge endorsed the prosecutor's opinion. On 26 April 2018, however, Mr Kargakis was sentenced to five years' imprisonment. He lodged an appeal on the same date.

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant complains about the conditions of his detention in Diavata Prison and the alleged shortcomings in his medical treatment. Under Article 13 (right to an effective remedy), he submits that no effective remedy was available to him. Lastly, he alleges that there has been a violation of Article 5 § 4 (right to a speedy decision on the lawfulness of detention). He considers that his appeal against the detention order imposed on him was not examined "speedily" by the investigating judge.

Vig v. Hungary (no. 59648/13)

The applicant, Dávid Vig, is a Hungarian national who was born in 1984 and lives in Budapest.

The case concerns the applicant's being searched by the police while at a festival.

In January 2013 the National Police Commissioner ordered that "enhanced checks" be carried out in Hungary in order to "to operate a screening network preventing illegal migration". This was done in accordance with pre-existing law. As part of this, checks were carried out at a community centre in Budapest where the applicant was attending a festival. The applicant asked why the checks were being carried out; the reply was that these were a "night check". The applicant stated that this was not in accordance with the Police Act; the police replied that it was a search for a missing person; others there said that these were "enhanced checks".

The police checked the applicant's identity. The applicant states that he was asked to go outside, and only did so as he felt intimidated by the group of police officers, especially having been pushed by one of them. He was searched then allowed to leave.

The applicant lodged a constitutional complaint in May 2013, challenging the constitutionality of the enabling pieces of legislation. It was rejected as time-barred. He complained to the Independent Police Complaints Board, which found that the search had been in accordance with the law and had not impinged on his rights.

The applicant complained to the Budapest police, who dismissed all the applicant's main complaints. The applicant applied for judicial review to the domestic courts, which rejected the application on the grounds that it could not review the "enhanced checks" or the operational plan carried out under the relevant legislation. It did find that the police actions had been carried out in accordance with the law.

Relying on Article 8 (right to respect for private and family life), Article 5 § 1 (right to liberty and security) and Article 13 (right to an effective remedy), the applicant complains that his being stopped and searched by the police breached his rights and that he did not have a remedy with regard to those breaches.

Terna v. Italy (no. 21052/18)

The applicant, Emilia Terna, is an Italian national who was born in 1966. She lives in Milan (Italy). In 2001 she married S.T., who belongs to the Roma ethnic group.

In this case, Ms Terna complains about the removal and placement in care of her granddaughter (who had resided with her since birth) by the social services, and the fact that she has been unable to exercise the access rights granted by the domestic courts. She considers that this situation results from stigmatisation of the child's family and is connected with their Roma ethnicity.

Between 2008 and 2014 Ms Terna and her husband were sentenced to several prison terms for drug trafficking and trafficking in human beings. In the meantime, in November 2010 one of S.T.'s daughters gave birth to a baby girl, whom she entrusted to Ms Terna as she herself was unable to care for the child. Following Ms Terna's arrest in 2014 and during her imprisonment, the child was entrusted to Ms Terna's sister.

In March 2016 the court entrusted custody of the child to the municipality of Milan and confirmed her placement with Ms Terna, held that the child's parents were deprived of parental responsibility and transmitted the file to the guardianship judge for monitoring of the family's situation. By a decision of 31 March 2016, the guardianship judge appointed an expert to carry out an assessment of the family situation. A guardian was appointed for the child on 5 April 2016.

Following three months of investigation and several interviews, the expert submitted his report. He noted that Ms Terna faced difficult challenges in managing the child's development, given that the girl suffered from delayed language acquisition and had attachment issues. It was mentioned that Ms Terna had no parental skills, was unemployed and was in an extremely difficult financial situation. He also indicated that the child was growing up in a family where several members had criminal records. The expert considered that the child's placement in a foster family and/or in a children's home, with continued contact with Ms Terna, was a possible solution. He also noted that the child's guardian had expressed doubts as to whether such contacts should be maintained, fearing a possible abduction of the child by her Roma family, and that she recommended severing the bond between the child and Ms Terna.

In October 2016 the court ordered that the child be placed in a children's home and instructed the social services to take charge of the contacts between Ms Terna and the little girl, who was placed in a children's home in November 2016. The child's guardian subsequently applied to the guardianship judge, requesting that the court-ordered meetings be suspended, as she considered that the child's Roma family might remove the girl by force if they discovered where she had been placed.

In November 2016 the guardianship judge invited the social services to suspend the meetings and asked the court to organise the meetings in a protected setting with a police presence, if this corresponded to the child's interest, in order to guarantee that the location of her placement remained unidentified.

In December 2016 the court confirmed its previous decision and instructed the social services to organise meetings with Ms Terna, while taking steps to ensure that the children's home in question was not identified. At the expert's request, the meetings, which had never taken place, were suspended pending finalisation of a new expert report.

In May 2017 the Milan psychologist, who had been monitoring the child for several years, submitted a report describing the child's unhappiness on account of the long interruption in contact with

Ms Terna. In her view, it would be in the interest of the child, and to her psychological benefit, for such meetings to be organised.

In June 2017 the expert submitted his report, finding that Ms Terna was devoid of parental skills and that the child was already well integrated in her new family.

In April 2018 the court declared the child available for adoption. It noted that the child's natural parents had been deprived of parental rights and that Ms Terna was the only person who had objected to the declaration of availability for adoption, since the child's grandfather was in prison. It considered that the child was in a situation of psychological and physical abandonment. With regard to Ms Terna, it considered that she was unfit to exercise her parental functions in such a way as to ensure the child's healthy and balanced development, for several reasons: firstly, the girl had been growing up in a criminal environment, one that was also characterised by Ms Terna's various convictions and by the fact that she continued to visit her husband in prison, without distancing herself from his criminal activity; further, Ms Terna had hidden the child's existence from the authorities for several years and had never told the girl the truth about her parents; in addition, the expert report had emphasised the applicant's cognitive and emotional shortcomings and her inability to place the child's needs ahead of her own. Ms Terna appealed against that decision.

In November 2018 the court of appeal ordered a new expert report in order to assess the relationship between the child and Ms Terna. The expert submitted his report in July 2019. He indicated that there were no grounds for ruling in favour of the child's removal, as Ms Terna was fulfilling her role in an adequate manner. The proceedings are pending before the Milan Court of Appeal.

Relying on Article 8 (right to respect for private and family life), Ms Terna complains about the failure to enforce her right of contact, recognised in 2016.

Relying on Article 14 (prohibition of discrimination) taken together with Article 8, she considers that since March 2016 she has been subjected to treatment that she describes as illegal, on account, in her view, of stigmatisation of the child's Roma family.

Relying on Article 13 (right to an effective remedy), she alleges that she has had no effective remedy in respect of her complaint under Article 8.

Gusev v. Ukraine (no. 25531/12)

The applicant, Mykola Vasylyovych Gusev, is a Ukrainian national who was born in 1945 and lives in Kremenchuk (Ukraine).

The case concerns Mr Gusev's complaint about the domestic courts' refusal to allow his claim for damages against the police following a failed operation to arrest his son's kidnappers, which resulted in the kidnappers running off with the ransom.

Mr Gusev's son was kidnapped in July 1998. The police intended to arrest the kidnappers during the handover of the ransom. However, when Mr Gusev threw the ransom out of a train, the kidnappers managed to escape with the money, which they hid and subsequently spent. Mr Gusev's son was set free a few days after the police operation.

The kidnappers were arrested in 2002 and convicted and sentenced to terms of imprisonment in 2004. The criminal courts found that the kidnappers had taken possession of Mr Gusev's money owing to the police's poor planning and lack of coordination.

In March 2005 Mr Gusev lodged a claim against the police and the State under general tort law seeking compensation for damages as a result of the failed operation. His claim, initially allowed in part, was ultimately rejected in February 2011 by the Court of Appeal. The Court of Appeal changed the legal characterisation of the applicant's claim, examining it under a legal provision which provides for compensation caused by unidentified or insolvent perpetrators. On that basis, it held that there was

no causal link between the police officers' actions and the damage caused by the perpetrators, who had been identified and their insolvency not proven.

In July 2011 the Higher Specialised Civil and Criminal Court of Ukraine upheld the 2011 judgment in a summary ruling.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), Mr Gusev alleges that the civil proceedings in his case were excessively long and unfair because of an unlawful application of the law. He also alleges that the courts' refusal to allow his claim against the police breached his rights under Article 1 of Protocol No. 1 (protection of property).

Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine (no. 11161/08)

The applicants, Mont Blanc Trading and Antares Titanium Trading Ltd, are, respectively, Mauritian and British companies which are registered in Port Louis (Mauritius) and London. The first applicant company is the majority owner of the second.

The case concerns breach of the fair-hearing principle in contract proceedings in Ukraine of a matter that was already under examination before an arbitral tribunal in the United Kingdom.

On 2 December 2003 the applicant companies entered into a series of contractual arrangements under English and Welsh law regarding the manufacture of titanium products in Ukraine and their exclusive sale through the applicant companies. According to the Government the applicant companies signed a supplementary agreement under Ukrainian law, thus changing jurisdiction for dispute settlement from London to the Ukrainian courts. The applicant companies refute that assertion.

In 2004 the applicant companies initiated proceedings against their contractual partner before the London Court of International Arbitration for breach of contract. They were awarded about four million United States dollars (USD) in compensation on 12 September 2005.

In the meantime the contractual partner initiated proceedings before the Kyiv Commercial Court for breach of contract. It did not inform the court that the matter was before an international tribunal. After the case was heard in their absence, the applicant companies were ordered to pay approximately USD 685,000 in compensation.

In June 2006 the applicant companies applied to the domestic courts to have that decision quashed and the proceedings closed on the basis of the London arbitration decision. The Commercial Court of Appeal examined the case allegedly in the absence of the applicants' representatives. It upheld the first-instance decision. Several cassation appeals by the applicant companies and by their partner went in sum against the former.

The applicant companies argue that the summonses for the domestic hearings were not served correctly on them.

In 2006 and 2007 the domestic courts at three instances refused to enforce the London Court of International Arbitration's decision.

Relying on Article 6 § 1 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property), the applicant companies complain that they were denied equality of arms before the domestic courts, that the court decisions were not properly reasoned, and that the decision not to enforce the arbitral award infringed their rights.

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.

Tuesday 12 January 2021

Name	Main application number
Kaminskienė v. Lithuania	48314/18
Butaş v. Romania	29723/05
Meţianu and Others v. Romania	224/04
Ştefănescu and Others v. Romania	6800/05
Adır and Others v. Turkey	40631/11
Ant v. Turkey	37873/08
Ilısal v. Turkey	16896/11
Kılınç v. Turkey	40884/07

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Name	Main application number
Gurbanov and Mammadov v. Azerbaijan	47147/14
Ibrahimov v. Azerbaijan	39466/16
Sadigov v. Azerbaijan	24668/15
Savalanli v. Azerbaijan	30608/14
A and Others v. Belgium	41118/14
Ivanova v. Bulgaria	71808/12
Nešković v. Bulgaria	36803/11
Bričić and Others v. Croatia	22279/15
Škrpan v. Croatia	41317/15
A.A. v. Finland	62733/19
M.A. and S.A. v. Finland	62756/19
Bangó and Others v. Hungary	4105/20
Sarwar and Others v. Hungary	14139/20
Belobrov v. the Republic of Moldova	17873/15
Homici v. the Republic of Moldova	45005/11
Î.M. Resan S.R.L. v. the Republic of Moldova	29333/14
Sandomierska and Others v. Poland	15549/17
Bokor v. Portugal	5227/18
P.V. v. Portugal	31253/18
Călin and Others v. Romania	29817/16
Domnu v. Romania	16827/16
Gândac and Others v. Romania	3557/16
Grigore and Others v. Romania	35424/16
Martin v. Romania	15929/17
Mircea and Others v. Romania	19480/16
Slăvoiu and Others v. Romania	27455/16
Tudor v. Romania	31711/16
Vlădescu and Others v. Romania	42362/16
Chudnovskiy and Others v. Russia	12922/14
Kiselev and Others v. Russia	66687/09
Krayushkin v. Russia	63202/19
Peyet and Others v. Russia	51122/07

Name	Main application number
Sotnikov and Others v. Russia	28524/10
Lilić and Others v. Serbia	16857/19
M.J. v. Serbia	3567/09
S.R. v. Serbia	8184/07
Stojanović and Others v. Serbia	19322/18
Çetin v. Turkey	81428/12
Erol v. Turkey	21333/12
Filitoğlu v. Turkey	35772/09
Kahraman and Others v. Turkey	41053/17
Şahin v. Turkey	1292/19
Sunol v. Turkey	52624/09
Uygur v. Turkey	15770/19
Yiğit v. Turkey	42961/18
Chornenko v. Ukraine	59660/09
Dedesh v. Ukraine	50705/13
Shavuk v. Ukraine	19649/20
Yolkin v. Ukraine	40059/19

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