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

Press Release
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Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 19 judgments on Tuesday 15 October 2019 and 66 judgments and / or decisions on Thursday 17 October 2019.

*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 15 October 2019

Kuzhelev and Others v. Russia (applications nos. 64098/09, 64891/09, 65418/09, 67406/09, 67697/09, 66035/09, and 1504/10)

The applicants, Viktor Kuzhelev, Yelena Pavlova, Valeriy Smirnov, Galina Kudryashova, Vera Petrova, Natalya Lebedeva, and Valeriy Tomilin, are Russian nationals who were born in 1946, 1953, 1940, 1954, 1947, 1957, and 1946 respectively and live in St Petersburg (Russia).

The case concerns the lack of enforcement of court judgments in their favour on unpaid salary and other work-related payments.

The applicants worked for a shipbuilding and ship repair company in St Petersburg called the Kronstadt Marine Plant, a State Unitary Enterprise ("the FGUP") of the Ministry of Defence. Owing to financial difficulties the company was placed under external administration in March 2005. A decision was subsequently taken to transfer the company's assets to a new company called OAO Kronstadt Marine Plant Awarded the Order of Lenin ("the OAO") within the substitution of assets' procedure, which took place in February 2007. FGUP employees were also transferred to the OAO.

The courts subsequently declared the transfer of the assets and the creation of the new company invalid and the assets went back to the FGUP. The OAO in turn dismissed the applicants in August 2008.

The applicants brought proceedings against both companies for unpaid or delayed salary and to be reinstated by the FGUP. They were wholly or partially successful in those claims and received judgments in their favour. Judgments against the OAO were never enforced while those against the FGUP were enforced with a delay.

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights and Article 1 of Protocol No. 1 (protection of property) to the Convention the applicants complain about the non-enforcement of judgments in their favour against the FGUP for unpaid wages in 2008 and for damages owing to a delay in the payment of severance packages.

They rely on the same provisions to complain about the lack of enforcement of judgments against the OAO on unpaid salaries for June to July 2008, as subsequently index-linked.

Just Satisfaction

Volchkova and Mironov v. Russia (nos. 45668/05 and 2292/06)

The case concerns the question of just satisfaction with regard to the expropriation of a property located in the town of Lyubertsy, near Moscow, in order to allow for a construction project by a private investor.

The applicants, who part-own a house and a plot of land in Lyubertsy, complained, in particular, that they had been deprived of their property to the exclusive advantage of a private investment project devoid of any social purpose, concerning the construction of a multi-storey building. They also submitted that the sum which they had been awarded in compensation had been derisory.

In its main judgment of 28 March 2017 the Court found that there had been a violation of Article 1 du Protocol No. 1 (protection of property).

The Court held that Russia should pay each applicant 3,000 euros (EUR) in respect of non-pecuniary damage and pay Ms Volchkova EUR 100 in respect of costs and expenses. Considering that the question of pecuniary damage was not ready for decision, the Court reserved it for decision at a later date.

The Court will address this question in its judgment of 15 October 2019.

Lispuchová and Lispuch v. Slovakia (no. 21998/14)

The applicants, Alena Lispuchová and Peter Lispuch, are Slovak nationals who were born in 1965 and 1951 and live in Pezinok and Búca (Slovakia), respectively.

The case concerns their complaint about the quashing of a final and binding judgment in their favour in a private property dispute in response to an extraordinary remedy.

In March 2006 Ms Lispuchová brought an action to have declared void a document in which her former spouse, Mr Lispuch, made a commitment to pay more than three million euros in a private dispute between shareholders. Mr Lispuch later joined the action. In a judgment that became final and binding in February 2011 the courts ruled in the applicants' favour, finding that the disputed document was an ordinary private–law contract that was void on account of its vagueness.

However, in 2012 at the request of one of the losing defendants the Prosecutor General exercised his discretionary power to challenge the judgments in the applicants' favour and lodged an extraordinary appeal on points of law. The Supreme Court allowed the appeal as it found that the lower courts had erred in their assessment of the legal nature of the document. In particular, it was not a private-law contract but an arbitral award which should have been contested under the Arbitration Act and in enforcement proceedings and not, as in the applicants' case, by an action for a declaratory ruling.

The case was thus remitted to the lower courts for adjudication, which they did in line with the Supreme Court's position, dismissing the applicants' action at first instance in 2014 and then on appeal in 2015. The applicants contested the Supreme Court's decision and the lower courts' further judgments on their case, without success.

The applicants complain that the quashing of the final and binding judgment in their favour breached their right to legal certainty and equality of arms under Article 6 § 1 (right to a fair hearing).

Çapın v. Turkey (no. 44690/09)

The applicant, Mehmet Atilla Çapın, is a Turkish national who was born in 1958 and lives in New York (USA).

The case concerns his efforts to find out the identity of his biological father.

On 31 October 2003, Mr Çapın initiated a paternity action alleging that a certain İsmail S. was his biological father. Mr Çapın had been placed in an orphanage at the age of four after his mother had married a second time and he had believed that his biological father, his mother's first husband, had died in a road accident. He had found out from relatives in October 2003 that he had actually been born out of wedlock, and that his biological father, İsmail S., was alive and living in Switzerland.

İsmail S. objected to the action for recognition of paternity. He argued that a similar action, lodged by the applicant's mother in 1958, had been dismissed by a binding and final court judgment. He also alleged that the applicant's action was prescribed.

After hearing testimony from the applicant's relatives and examining a petition brought by the alleged father's family after his death in 2005, the first-instance court dismissed the lawsuit as time-barred. The applicant appealed, maintaining that his biological father's existence had not been known to him until 2003 and that his right to know his parentage should not be subjected to time-limits. In 2009 the Court of Cassation dismissed the action, judging that the applicant had not sufficiently justified his delay in bringing the case. The applicant also states that a request to have the paternity proceedings reopened is currently being dealt with by the Ankara Family Court.

Relying in particular on Article 8 (right to respect for private and family life), the applicant complains that the dismissal of his paternity action as time-barred has stopped him from discovering the truth about his biological father's identity.

Mehmet Ali Eser v. Turkey (no. 1399/07)

The applicant, Mehmet Ali Eser, is a Turkish national who was born in 1958 and lives in Istanbul (Turkey).

The case essentially concerns restrictions on his right of access to a lawyer during the preliminary investigation stage of proceedings against him for being a member of an illegal armed organisation.

On 5 August 1997, Mr Eser was arrested on suspicion of being a member of TKP-ML/TIKKO (Communist Party of Turkey/Marxist-Leninist/Turkish Workers and Peasants' Liberation Army), while also in possession of a fake identity card. He was taken to a police station for questioning but remained silent. Over the next seven days, he was initially refused access to legal assistance and alleges that he was tortured by the police. He had three separate medical examinations which were inconclusive. A few days later, a co-accused, Z.Ş., gave a statement which confirmed the applicant's involvement in the criminal organisation.

Mr Eser was ultimately found guilty in 2009 and sentenced to six years and three months' imprisonment. The trial court relied on the arrest report, the fake identity card and Z.Ş.'s statements, noting that Mr Eser had denied the accusations against him throughout the proceedings.

He raised allegations of ill-treatment before the public prosecutor and the investigating judge at the pre-trial stage, and before the trial court during the criminal proceedings, but no action was taken.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Eser alleges that he was subjected to ill-treatment during his police custody. He further complains under Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing) that his statements taken in the absence of a lawyer and under coercion were used by the trial court to convict him.

Thursday 17 October 2019

Hakobyan and Amirkhanyan v. Armenia (no. 14156/07)

The applicants, Versandik Hakobyan and Heghine Amirkhanyan, are Armenian nationals who were born in 1950 and 1958 respectively and live in Yerevan. They are husband and wife and jointly owned a house and a plot of land in central Yerevan.

The case concerns the expropriation of their property.

In 2000, the Armenian Government approved a town-planning project in Yerevan, which required tthe applicants' property to be taken for state needs. The applicants argued in the domestic

proceedings that the Government had significantly and consistently undervalued the compensation offer for their property. In 2006, their property was expropriated by the State.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant couple complain that they were deprived of their property without any prevailing public interest on the basis of grossly underestimated valuations. Further, they have not received any compensation for their expropriated property. They also complain under Article 6 § 1 (right to a fair trial) that the related civil proceedings were unfair.

Mushfig Mammadov and Others v. Azerbaijan (nos. 14604/08, 45823/11, 76127/13, and 41792/15)

The applicants, Mushfig Faig oglu Mammadov, Samir Asif oglu Huseynov, Farid Hasan oglu Mammadov, Fakhraddin Jeyhun oglu Mirzayev and Kamran Ziyafaddin oglu Mirzayev, are five Azerbaijani nationals who were born in 1983, 1984, 1987, 1993 and 1994 respectively and live in Baku and Ganja (in the case of Mr Fakhraddin Jeyhun oglu Mirzayev) (Azerbaijan). All five state that they are Jehovah's Witnesses.

The case concerns the applicants' refusal to serve in the army on religious grounds.

The applicants, who are all of age to be called up for military service, informed their local military commissariats or recruitment offices that they wished to be exempted from such service and, in the case of most of them, to perform alternative civilian service. They were all prosecuted under Article 321.1 of the Penal Code and sentenced to imprisonment. Their appeals were dismissed.

Relying on Article 9 (right to freedom of conscience, thought and religion), the applicants complained about their convictions for having refused to serve in the army. Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice), the first applicant alleges that his second conviction amounted to a violation of that provision.

Oddone and Pecci v. San Marino (nos. 26581/17 and 31024/17)

The applicants, David Oddone and Alessandro Pecci, are Italian nationals who were both born in 1979 and live in Rimini (Italy).

The case concerns their allegation that proceedings against them for car insurance fraud were unfair.

The police found that three car accidents between 2008 and 2011 involving Mr Oddone and on one occasion Mr Pecci were suspicious and they began an investigation. During questioning two of the people involved, G. and L., who knew Mr Oddone and Mr Pecci, admitted that the accidents had been simulated. They had all allegedly participated in the scheme.

In 2014 both applicants as well as G. and L. were indicted of insurance fraud. G. and L. attended a preliminary hearing, but none of those that followed, and admitting the charges, asked the trial court to take this into account as a mitigating circumstance when sentencing them. The applicants did not have the opportunity to cross-examine L. and G.

In 2015 all four were found guilty as charged. Mr Oddone was sentenced to two years and five months' imprisonment, while the others were sentenced to two years' imprisonment. This judgment was upheld on appeal in 2016 in respect of all the accused, except for L. whose case was dismissed as time-barred.

At both first and second instance, the judges found that G. and L.'s statements had been corroborated by other evidence, namely the records of telephone calls between some of the accused before and after the accidents, and the fact that two of the accidents had occurred in the same street and had involved the same driver and passengers.

During these proceedings the applicants requested that the investigation be reopened in order to cross-examine G. and L., without success. In particular, the investigating judge and first-instance judge held that under domestic law, an accused person could not cross-examine a co-accused witness.

Mr Oddone brought revision proceedings before the Judge of Extraordinary Remedies in Criminal Matters, but the request was rejected in 2019.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), the applicants complain that they were prevented from cross-examining G. and L. during the investigation and at trial, despite such testimony being decisive for their convictions.

G.B. and Others v. Turkey (no. 4633/15)

The case concerns the immigration detention of a mother and her three young children pending their deportation from Turkey.

The applicants, G.B. and her three children, are Russian nationals who were born in 1986, 2008, 2012, and 2013 respectively. Accordingly to the latest information in the case file, they currently live in Baku (Azerbaijan).

They entered Turkey on 17 October 2014. According to the official records, they were arrested the next day attempting to illegally cross the border into Syria. The local governor's office ordered G.B.'s detention pending deportation and the whole family were transferred to Kumkapı Foreigners' Removal Centre in Istanbul.

On 23 October 2014 the Istanbul governor's office further ordered the deportation and detention of G.B. The whole family was held at the Kumkapı Foreigners' Removal Centre for the next three months, before being transferred on 23 January 2015 to the Gaziantep Foreigners' Removal Centre. Following their transfer, the Gaziantep governor's office issued a deportation and detention order against all four applicants.

The applicants challenged the lawfulness of their detention at both removal centres, and requested their release. They stressed that the conditions at the centres were particularly unsuitable for young children and that the authorities had not considered any alternatives to detention, despite their vulnerable situation.

The Istanbul Magistrate's Court examined their requests with regard to their detention at Kumkapı. In an initial decision of November 2014 it decided that it could not rule on the lawfulness of the minor applicants' detention at this centre because it found that there was no decision actually ordering their placement there. It further found that their mother's detention was lawful as she posed a danger to public safety and had attempted to leave Turkey illegally. In four subsequent decisions, the court similarly declared the G.B. detention lawful, referring to the relevant legal provisions under domestic law.

The Gaziantep Magistrates' Court, on the other hand, in a decision of 5 February 2015 concluded that the applicants' detention at Gaziantep did not comply with law, and ordered their release. The court found in particular that no explanation had been given as to why their detention was called for and that an asylum request was still ongoing before the administrative courts. They were released five days later.

On 15 December 2014, while still being held at Kumkapı, the applicants had also lodged an individual application with the Constitutional Court about the conditions and unlawfulness of their detention and the fact that it was impossible for them to raise those complaints under domestic law.

On 9 January 2015 the Constitutional Court dismissed their request for urgent measures, holding that the conditions of their detention did not amount to an immediate and serious risk to their lives or to their physical or mental integrity. That court then declared the case inadmissible in May 2018,

finding that the applicants had in the meantime been released following the decision by Gaziantep Magistrates' Court and that they could bring compensation proceedings in respect of complaints concerning both the conditions and the unlawfulness of their detention before the administrative courts.

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life) and 13 (right to an effective remedy), the applicants complain about the conditions of their detention at Kumkapı, especially on account of overcrowding, poor hygiene and lack of outdoor exercise, and allege that conditions at Gaziantep were even worse.

They also bring a number of complaints under Article 5 §§ 1, 2, 4, and 5 (right to liberty and security / right to be informed of the reasons for arrest / right to have lawfulness of detention decided speedily by a court / right to compensation), alleging that their detention was unlawful, that the authorities failed to inform them of the reasons for their detention, that the judicial review mechanism to challenge the lawfulness of detention was ineffective and that they could not claim compensation under domestic law.

Polyakh and Others v. Ukraine (nos. 58812/15, 53217/16, 59099/16, 23231/18, and 47749/18)

The applicants, Vyacheslav Polyakh, Dmytro Basalayev, Oleksandr Yas, Roman Yakubovskyy, and Sergiy Bondarenko, are Ukrainian nationals who were born in 1970, 1976, 1954, 1977, and 1957 respectively and live in Kyiv, Mykolayiv, Chernigiv, Yaremche (Ivano-Frankivsk Region), and Oleksandrivka (Donetsk Region) (all in Ukraine).

The case concerns the applicants being dismissed as civil servants under the Government Cleansing (Lustration) Act of 2014 ("the GCA").

After the departure from office of former President Viktor Yanukovych as a result of the "EuroMaidan" protests of November 2013 to February 2014, the new government and parliament passed a law to dismiss people who had occupied certain positions in the civil service for at least a year from the time Mr Yanukovych had become president in February 2010 to his departure in February 2014, or had held certain positions in the Communist Party of the former Ukrainian Soviet Socialist Republic before 1991. Civil servants also had to fill in "lustration declarations" if they were covered by the restrictions in the law.

The first three applicants were dismissed under the GCA in October 2014, based on the fact that they had worked in the civil service in the periods covered by the law. The fourth applicant was dismissed after failing to file a lustration declaration in time, while the fifth applicant lost his job because he was a second secretary of the Communist Party at the district level before 1991.

In subsequent court proceedings brought by the applicants to be reinstated, the first three applicants' cases were suspended in 2014 or 2015 pending a ruling by the Constitutional Court on the constitutionality of the GCA. The other two applicants' dismissals were upheld by the courts in 2018 on the grounds that, among other things, the Constitutional Court had not ruled the law unconstitutional.

According to information available to the Strasbourg Court at the time of examination of the case, the Constitutional Court is still considering the matter of GCA's constitutionality.

Relying on the various fair trial guarantees set down in Article 6, the first three applicants complain about the ongoing failure of the domestic courts to examine their claims.

All the applicants complain under Article 8 (right to respect for private life) about their dismissal and the effect it has had on them. The second applicant also raises a complaint of a breach 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.

Tuesday 15 October 2019

Name	Main application number
Žemaitis v. Lithuania	74305/17
Grama and Dîrul v. the Republic of Moldova and Russia	28432/06
Bondarenko v. Russia	5859/07
Bozhkov v. Russia	13768/06
Gobayev v. Russia	48978/11
Grigoryev v. Russia	52673/07
Kabilov v. Russia	46206/10
Nekrasov v. Russia	18791/13
Smirnova v. Russia	9157/04
Purić and R.B. v. Serbia	27929/10
Akçayöz and Others v. Turkey	76035/11
Engin and Others v. Turkey	74941/12
Garipoğlu v. Turkey	58764/09
Köklü and Others v. Turkey	77832/12

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Name	Main application number
A.A. v. Belgium	51705/18
Becker and Zweiphenning v. Belgium	12079/12
Richa v. Belgium	39078/11
Vuchev v. Bulgaria	34798/11
Jeantet v. France	40629/16
Lafonta v. France	57098/15
Kempkes v. Germany	46026/16
M.W. v. Germany	40087/14
Groubas and Roïdakis v. Greece	20005/18
Kolonis and Others v. Greece	39256/13
Soufleris and Chani v. Greece	73463/17
Dotenergo Zrt and Others v. Hungary	31577/17
Halász and Others v. Hungary	70717/14
Németh v. Hungary	6300/19
Rácz v. Hungary	50479/18
Dragović v. Montenegro	35056/17
Cubleşan and Others v. Romania	52969/15
Dobrescu v. Romania	34091/16
Dragomir and Popescu v. Romania	69123/14
Gherman and Others v. Romania	13084/15
Medrea and Others v. Romania	50308/15

Name	Main application number
Negreanu and Others v. Romania	19176/14
Pop and Negru v. Romania	15054/17
Rostaş and Others v. Romania	17837/16
Tirpe and Others v. Romania	68070/14
Arkhangelskiy and Others v. Russia	12348/05
Bakayevy v. Russia	67744/11
Chaburov and Others v. Russia	67434/12
Fomenko and Others v. Russia	42140/05
Gayevoy and Others v. Russia	41214/04
Gromovoy and Others v. Russia	42361/17
Ismailovy and Others v. Russia	2664/12
K.F. v. Russia	39552/16
Magamadova and Others v. Russia	57707/13
Moiseyev v. Russia	19186/13
Murtazaliyeva and Others v. Russia	11708/11
Shchitova v. Russia	70742/14
Sroo Sutyazhnik v. Russia	23818/04
Starodubtseva v. Russia	32592/17
Titarenko v. Russia	33527/16
Vetlitskaya v. Russia	45148/15
Zhivitsa v. Russia	30877/16
Zuyev v. Russia	12487/11
Denžič v. Slovenia	36013/16
Akın v. Turkey	5285/10
Çayan v. Turkey	35826/09
Çiftçi v. Turkey	71767/11
Kirmit v. Turkey	44980/11
Konca v. Turkey	44166/12
Leyla v. Turkey	66695/12
Örnek and Others v. Turkey	58528/09
S.S. Ümraniye-Çakmak Konut Yapı Kooperatifi v. Turkey	22440/07
Şener v. Turkey	1676/13
Solmaz v. Turkey	49373/17
Temel v. Turkey	41924/09
Turğay and Others v. Turkey	37747/11
Yanar and Others v. Turkey	3566/17
Yurdakök v. Turkey	13707/07
Kopytets and Shtopko v. Ukraine	9706/19
Tsatsenko and Ryabokon v. Ukraine	5481/19
Tsukur and Others v. Ukraine	53132/18

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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.