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 seven judgments on Tuesday 17 November 2020 and 21 judgments and / or decisions on Thursday 19 November 2020.

*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 17 November 2020

B and C v. Switzerland (applications nos. 889/19 and 43987/16)

The applicants, Mr B and Mr C, are a Gambian and a Swiss national who were born in 1974 and 1948 respectively and lived in St Gall (Switzerland) together until the second applicant's death on 15 December 2019.

The case concerns the refusal of family reunification for the couple and Mr B's impending deportation to the Gambia.

The first applicant had been in Switzerland since 2008. His application for asylum was rejected, despite arguing that he would be in danger of imprisonment if returned to the Gambia as he had previously been caught performing a homosexual act there.

In 2014 the applicants registered their partnership. The second applicant lodged a request for family reunification in respect of the first applicant. The application was rejected. On appeal, the Office for Security and Justice of the Canton of St Gall ("the OSJ") denied Mr B the right to stay in Switzerland during the family-reunification proceedings. That decision was ultimately upheld by the Federal Supreme Court, which also noted his criminal record in the Canton of Lucerne and his time spent in prison. Mr B remained in Switzerland for the duration of the family-reunification proceedings, following the indication of an interim measure by the European Court.

Subsequently, the OSJ decision was upheld regarding family reunification. The Federal Supreme Court stated that the first applicant had a family network he could rely on in the Gambia, where the situation for homosexuals had improved. It furthermore noted that he was not well-integrated in Switzerland, and referred to his criminal record. It held that there was a "major public interest" in the applicant's leaving the country and that the interference with his rights was justified.

Relying on Article 3 (prohibition of human or degrading treatment) of the European Convention on Human Rights, the applicants claim that the first applicant would be at risk if returned to the Gambia.

Akın v. Turkey (no. 58026/12)

The applicant, Necmettin Akın, is a Turkish national who was born in 1978 and lives in Antalya (Turkey).

In this case, Mr Akın complains of his ill-treatment by police officers during an identity check and of the ineffectiveness of the investigation into that matter.

At around a.m. on 8 June 2003 Mr Akın, who was allegedly under the influence of alcohol, was stopped by two police officers on patrol outside the US Consulate in Istanbul. The police officers called reinforcements, and an altercation ensued.

On the same day Mr Akın was arrested and then transferred to hospital: two medical reports were drawn up, at 4.59 a.m. and 2.40 p.m. respectively, mentioning several physical injuries to the applicant. Mr Akın was released, whereupon he lodged a complaint of ill-treatment. At the public prosecutor's request the Institute of Forensic Medicine immediately examined the applicant and drew up a report.

On 12 March 2014 the prosecutor made a partial discharge order concerning six police officers. Subsequently, in May 2004, he indicted two officers, one of whom was missing until 2006, having been dismissed from the civil service. When he was traced in 2006, Mr Akın stated that he had not been the officer who had struck him.

Ultimately, two sets of criminal proceedings were conducted at different times against two officers, N.D. and E.S. The first set of proceedings ended with a judgment delivered by the assize court on 25 March 2009, sentencing police officer N.D. to six months' imprisonment. The second set of proceedings also ended with an assize court judgment on 22 June 2009, sentencing police officer E.S. to five months' imprisonment. The assize court held that the two officers had caused Mr Akın actual bodily harm in abuse of their powers, accompanying the sentence with a provisional ban on discharging public duties.

The two police officers (N.D. and E.S.) appealed on points of law. In June 2011 and March 2012 the Court of Cassation struck the cases out as being statute-barred.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, Mr Akın complains of the ineffectiveness of the investigation, considering that the facts became statute-barred as a result of the authorities' failure to identify and summon the police officers in question and then to conduct the requisite proceedings.

Süleyman v. Turkey (no. 59453/10)

The applicant, Hakan Süleyman, is a Turkish national who was born in 1981 and is serving a prison sentence in Tekirdağ (Turkey).

The case concerns the unfairness of criminal proceedings on account of the applicant's alleged inability to question and confront the only eyewitness to a murder.

The applicant was convicted for firing weapons at the Black Sea Hotel near Trabzon in August 2005. He was later charged with allegedly falsely imprisoning an international footballer in 2006, and of shooting into the footballer's wife's shop and at the car of another footballer.

In January 2006 a receptionist at the same hotel was shot and killed. The key witness had been able to see the perpetrator's features when he turned into the light, later identifying him as the applicant. Furthermore, initial ballistics evidence (later contradicted) confirmed the firearm used had been that used in the shooting of August 2005. The applicant's phone, however, had not made a call that evening via the network mast that covered the area of the hotel.

The case was heard by the Erzurum Specially Authorised Assize Court. The applicant applied to have the right to put questions to the witnesses, including the key witness, whose identity had been made public in the meantime. The prosecutor argued that he should be treated as an "anonymous witness".

The trial court read out a transcript of the key witness's testimony. Counsel for the applicant argued that contradictions in the testimony *vis-à-vis* the official account, their inability to examine all the witnesses, and shortcomings in the police-organised confrontation, infringed the applicant's right to a fair trial. The trial court decided to re-examine the witnesses in person, save for the key witness. Some of those witnesses were examined before another court, the Trabzon Assize Court.

The applicant was convicted of murder. The court emphasised that the phone records, especially given that the applicant's phone had been turned off around the time of the crime, did not prove the

applicant had not been at the hotel. He was also convicted of a variety of serious and violent crimes, including aggravated robbery. The murder conviction was upheld on appeal, but that for aggravated robbery was eventually overturned.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), the applicant complains that because he could not question the only eyewitness in the case his right to a fair trial was infringed.

Thursday 19 November 2020

Pantalon v. Croatia (no. 2953/14)

The applicant, Đani Pantalon, is a Croatian national who was born in 1964 and lives in Zadar (Croatia).

The case concerns the applicant's complaint that he was convicted in minor-offence proceedings for failing to declare a diving speargun at a border control.

The applicant was indicted in 2009 for the minor offence of failing to declare a weapon after the Croatian border police had searched his car when he had been on his way back from Bosnia and Herzegovina and found a diving speargun, together with other beach equipment.

He was found guilty of the minor offence and fined in 2010. His speargun was also confiscated.

He appealed, arguing that spearguns were not considered weapons under the relevant domestic legislation. The High Minor Offences Court dismissed his appeal in 2012, ruling that spearguns were bowstring weapons under domestic law. He should therefore have declared his speargun at the border.

His constitutional complaint, in which he further argued that his speargun was band- and not bowstring-powered and exclusively intended for fishing, was dismissed as ill-founded in 2013.

Relying in particular on Article 7 (no punishment without law), Mr Pantalon alleges that he was convicted for an act which did not constitute an offence under domestic law.

Project-Trade d.o.o. v. Croatia (no. 1920/14)

The applicant, Project-Trade d.o.o., is a limited liability company incorporated under Croatian law which is based in Zagreb.

The case concerns the applicant company's complaint of being deprived of its shares in a commercial bank following Government restructuring.

The applicant company was a shareholder of Croatia Bank, a privately-owned joint-stock company incorporated under Croatian law.

In 1999 the Croatian National Bank appointed a temporary administrator at Croatia Bank and proposed a process of recovery and restructuring to the Croatian Government.

The Government adopted a decision on the recovery and restructuring of Croatia Bank on 23 September 1999. All shares held by the bank's shareholders were revoked and cancelled. The bank issued new shares, all in the name of the State agency in charge of the recovery process. The powers of the bank's governing bodies and the rights of shareholders were also extinguished.

In 1999 and 2000 five shareholders of the bank lodged four separate applications with the Constitutional Court for a review of the conformity of the Government's decision with the Constitution and with the relevant primary legislation. In January 2003 the Constitutional Court discontinued the proceedings since the legislation on which the Government's decision was based had in the meantime been repealed.

In September 2003 the applicant company brought a civil action against the bank and the State agency, arguing that the Government's decision had been unjustified in economic terms and that the statutory requirements had not been satisfied.

In February 2006, the first-instance court dismissed the applicant company's action. It established that all the existing shares of the bank had been extinguished and that the new shares issued were now owned by the State agency. In June 2008 the appeal court dismissed the applicant's appeal concerning the constitutionality of the Government's decision.

Relying on Article 6 § 1 (right to a fair trial/right of access to court) and Article 1 of Protocol 1 (protection of property), the applicant company complains of being deprived of its shares in Croatia Bank following the Government decision on its restructuring and recovery, the lack of access to the domestic courts to complain in respect of the decision, the excessive length of the proceedings and the inadequate reasoning of the Constitutional Court.

Barbotin v. France (no. 25338/16)

The applicant, Jean-Claude Barbotin, is a French national who was born in 1951 and lives in Saint-Brieuc (France).

The case concerns the compensation awarded to the applicant by the domestic authorities in respect of his conditions of detention in Caen remand prison. The applicant complains of the ineffectiveness of the compensatory remedy of which he availed himself, in view of the inadequacy of the compensation paid and the fact that he had to pay the costs of the expert assessment of the state of the cells in which he had been held.

Mr Barbotin was detained in Caen remand prison from 28 August to 1 September 2008 and subsequently from 4 November 2008 to 27 July 2010. On 15 June 2010 he asked the urgent applications judge of the Caen Administrative Court to appoint an expert to inspect the state of his cells in the remand prison. By order of 16 June 2010 the urgent applications judge allowed the request and appointed an expert, who submitted a report.

The expert found that four of the six cells occupied by the applicant were in a good overall state, and that the fifth had been completely renovated. The sixth cell, which measured 16 m² and which Mr Barbotin had shared with four other detainees, was decayed, run-down and badly lit, and had insufficient air for five adults.

By order of 6 September 2010 the Administrative Court estimated the cost of the expert assessment at EUR 773.57. That amount was charged to the State, which was declared liable for the advance payment of the legal aid for which the applicant was eligible. Concurrently, the Justice Minister lodged a third-party appeal against the order of 16 June 2010, arguing that the expert report had been unnecessary since an expert report had already been drawn up on the conditions of detention in Caen remand prison. By order of 28 July 2010, the urgent applications judge at Caen Administrative Court dismissed the request. The Justice Minister appealed against that ruling, which was nullified by judgment of the Nantes Administrative Court of Appeal on 27 January 2011. On 26 January 2012 the *Conseil d'État* dismissed the applicant's appeal on points of law.

On 31 August 2012 Mr Barbotin filed an action for damages against the State, seeking compensation for the damage resulting from his conditions of detention at Caen remand prison. By judgment of 28 May 2013, the Caen Administrative Court ruled that during his detention, which had lasted some 24 months, the applicant had, for just over four months, from 27 January 2010 to 2 June 2010, been held in conditions of detention incompatible with respect for human dignity, and ordered the State to pay him 500 euros (EUR) in compensation in respect of non-pecuniary damage.

The Administrative Court also ordered the applicant to defray the costs of the expert assessment, totalling EUR 773.57, on the grounds that the order of 16 June 2010 commissioning the expert report had been declared null and void.

On 2 December 2015 the *Conseil d'État* dismissed the main appeal on points of law lodged by the applicant and the cross-appeal lodged by the Ministry of Justice.

Relying on Article 13 (right to an effective remedy) read in conjunction with Article 3 (prohibition of inhuman and degrading treatment), the applicant complains of the ineffectiveness of the compensatory remedy which he exercised before the domestic courts, inasmuch as the amount awarded in compensation was insufficient and the order to defray the costs of the expert report meant that he owed money to the French State.

Shavadze v. Georgia (no. 72080/12)

The applicant, Tsitsino Shavadze, is a Georgian national who was born in 1965 and lives in Batumi (Georgia).

The case concerns the death of the applicant's husband, a military officer, in police custody.

Against the background of the five-day war between Georgian and Russian military forces in August 2008, the applicant's husband, R.Sh., was arrested on a street in Batumi by a unit of security forces of the Ministry of the Interior. Independent eyewitnesses subsequently reported that he had been ferociously beaten by law-enforcement officers and called "a traitor to this country" before being taken away in a van.

According to the official version of events, law-enforcement officers arrested R.Sh. in relation to a drug offence. He was fatally injured by escorting officers when attempting to escape during his transfer from Batumi to Tbilisi.

The applicant alleges that her husband died as a result of severe ill-treatment, claiming that his body displayed clear signs of torture when returned to her. She submits in particular video-footage of his body with multiple injuries, including extensive deep wounds and what appeared to be broken fingers.

The Ministry of the Interior immediately opened a criminal pre-investigation inquiry into R.Sh.'s death. In the following days it carried out all the preliminary investigative measures before handing the investigation over to the prosecuting authorities. The investigation has not produced any conclusive findings since then and is currently ongoing. The applicant, who has repeatedly complained about not being granted civil-party status in the proceedings, has neither been allowed access to the case file nor the post-mortem report.

Relying on Article 2 (right to life), Ms Shavadze alleges that law-enforcement officers tortured her husband to death and that the related investigation was ineffective.

Klaus Müller v. Germany (no. 24173/18)

The applicant, Klaus Müller, is a German national who was born in 1967 and lives in Rhede (Germany).

The case concerns lawyer-client privilege.

Between 1996 and 2014 the applicant (a lawyer) and his firm gave legal advice to four companies that went into insolvency in 2014. In 2017 criminal proceedings were opened against the former managing directors of those companies. The applicant was summoned as a witness. Despite the managing directors at the time of the trial waiving lawyer-client privilege, the applicant refused to testify, arguing that he was still bound by professional secrecy unless released by the former managing directors too.

Twice the Münster Regional Court ruled that the applicant had no right to refuse to testify, and fined him. On the first occasion the Hamm Court of Appeal quashed the fine order. In the second appeal proceedings the Court of Appeal upheld the Regional Court's decision. It acknowledged the divergent case-law of courts of appeal around Germany in similar matters. However it stated that

the lawyer-client relationship existed between the company and its lawyer only, and that the interests of a former managing director might run counter to those of the company.

The applicant lodged a constitutional complaint with the Federal Constitutional Court, which on 26 March 2018 refused to entertain that complaint.

The applicant later paid 600 euros in fines and testified in court on pain of administrative detention.

Relying on Article 8 (right to respect for private life), the applicant complains that forcing him to testify breached his legal professional privilege.

Efstratiou and Others v. Greece (no. 53221/14)

The applicants, Kyriaki Efstratiou, Amalia Efstratiou, Neofytos Efstratiou, Anna Samiotou and Kalliopi Samiotou, were born between 1944 and 1982 and live in Athens.

The case concerns civil proceedings which resulted in the applicants being ordered to pay the opposing party a total of 334,330.95 euros, the court of appeal having ruled that they had received that sum unduly as a donation, to the detriment of one of the donor's heirs.

The domestic proceedings were commenced in 2010 before the Athens Court of First Instance, which delivered judgment in favour of the applicants and dismissed the other party's claims. The latter party appealed, successfully, before the Athens Court of Appeal in 2012. The proceedings ended in 2014 with a judgment from the Court of Cassation dismissing the applicants' appeal on points of law.

The applicants complain that the court of appeal failed to take account in its appraisal of a piece of evidence which had been submitted to the court of first instance, on the grounds that it had not been submitted in accordance with the requirements of Article 240 of the Greek Code of Civil Procedure. The applicants consider that the evidence in question was decisive for the outcome of the proceedings.

Relying in particular on Article 6 § 1 (right to a fair trial / right of access to a tribunal), the applicants allege that the refusal by the court of appeal and the Court of Cassation to take account of the documentary evidence in question was excessively formalistic. They also consider that the civil courts restricted their right to a fair trial in a manner which was unclear, inaccessible and unforeseeable, that that restriction did not seek to achieve a legitimate aim and that it was not proportionate to the aim pursued.

Dupate v. Latvia (no. 18068/11)

The applicant, Kristīne Dupate, is a Latvian national who was born in 1973 and lives in Riga.

The case concerns surreptitiously taken photos of the applicant leaving a maternity ward and their subsequent publication with an accompanying article.

At the time of the events in question, the applicant was a lawyer and her partner was the chairperson of a political party and the face of an advertising campaign for *Privātā Dzīve*, a nationally available celebrity-focused magazine. Previously, he had headed a State-owned company.

In 2003, *Privātā Dzīve* published an article about the break-up of the applicant's partner's previous marriage, including pictures of the applicant and information about her pregnancy with their first child. In 2004 the magazine published an article about the birth of the applicant's second child, including covertly taken photos – one of which was the cover photo – of her leaving hospital with her child carrying baby paraphernalia and going to her car.

In 2006 she brought a case before the courts, claiming infringement of her right to respect for her private life. The Riga City Central District Court found for her. Nevertheless, the magazine republished the article and photos, alongside a statement that they disagreed with the judgment.

In subsequent appellate proceedings, the Riga Regional Court found against the applicant, noting in particular the applicant's status as the partner of a public figure, the applicant's and her partner's attitude to publicity, that the photos had been taken in a public place, that they had not been humiliating, and that the journalists involved had not tracked her daily life, rather they had focused on one event.

A subsequent appeal on points of law was dismissed by the Latvian Supreme Court.

Relying on Article 8 (right to respect for private and family life) the applicant alleges that the dismissal of her complaints regarding the publication of covertly taken photos of her and her newborn baby violated her 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 17 November 2020

Name	Main application number
Panayotov v. Bulgaria	66491/14
Konya and Others v. Romania	37087/03
Mărciulescu and Neacșu v. Romania	15297/17
Mihancea v. Romania	26354/14

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Name	Main application number
Allahverdyan v. Armenia	51949/14
Hajiyev v. Azerbaijan	29648/07
Mahaddinova and Others v. Azerbaijan	34528/13
Marković and Arsić v. Bosnia and Herzegovina	40296/18
Bilan v. Croatia	57860/14
Dessources v. France	11125/15
Société Pages Jaunes v. France	5432/16
Iatridis and Others v. Greece	25993/17
Kraujas Hes v. Latvia	55854/10
Boshkoski v. North Macedonia	73778/13
Janevski v. North Macedonia	30259/15
Gorzkowski v. Poland	65546/13
Marian v. Romania	51185/06
Kandyba and Others v. Ukraine	33137/16

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Press contacts
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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.