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

Press Release
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ECHR 212 (2019)
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# Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 16 judgments on Tuesday 18 June 2019 and 28 judgments and / or decisions on Thursday 20 June 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 18 June 2019

### Vladimir Ushakov v. Russia (application no. 15122/17)

The applicant, Vladimir Nikolayevich Ushakov, is a Russian national who was born in 1977 and lives in Vantaa (Finland).

The case concerns proceedings over international child abduction.

While living in Finland, Mr Ushakov married I.K., a Russian national, and together they had a daughter, V., in 2012. Soon after V.'s birth, I.K. suffered two strokes, leaving the applicant to take care of V. The couple's relationship deteriorated and in June 2013 I.K. went to Russia for treatment. She returned to Finland in August 2013.

After divorce proceedings brought in August 2013, the District Court ruled that the couple should have joint custody of V., who was to reside with the applicant. The Helsinki Court of Appeal and the Supreme Court dismissed appeals by I.K. However, before the Supreme Court's judgment I.K. took the child to Russia in February 2015 without the applicant's consent and told him that V. would not be returning.

Mr Ushakov lodged a request for the return of his daughter under the Hague Convention on the Civil Aspects of International Child Abduction. The St. Petersburg City Court ultimately found that V. was not habitually resident in Finland, that her removal from Finland and retention in Russia were not unlawful within the meaning of Article 3 of the Hague Convention and that V.'s medical conditions fell within the exception to immediate return under Article 13 (b) of the Hague Convention.

Mr Ushakov lodged a cassation appeal but judges at both the City Court and the Supreme Court refused to refer the above judgment for review under the cassation procedure.

The applicant complains under Article 8 (right to respect for family life) of the European Convention on Human Rights about the Russian courts' refusal of his application for the return of his daughter to Finland.

### Haddad v. Spain (no. 16572/17)

The applicant, Mr Wael Haddad, is a Syrian national who was born in 1976 and lives in Madrid.

The case concerns the placement of the applicant's youngest child with a foster family.

In January 2012 Mr Haddad and his wife, a Spanish national, left Syria with their three minor children because of the war and travelled to Spain. One month after their arrival Mr Haddad's wife lodged a criminal complaint against him for domestic violence. On 2 February 2012 a judge issued a temporary protection order which included a criminal-law measure barring the husband from approaching his wife and their three children and from communicating with them, and a civil-law measure temporarily withdrawing Mr Haddad's parental responsibility and access rights.

On 15 June 2012 the Madrid regional government declared the three children (aged nine, six and one) legally abandoned and they were placed in residential facilities. Mr Haddad was not informed. He was notified of the hearing to confirm the children's guardianship by means of a notice published in the Murcia official gazette and was also telephoned by a member of the child protection department.

On 27 September 2013 the criminal court acquitted Mr Haddad of all the charges in the proceedings concerning him and set aside the criminal and civil-law measures ordered by the judge on 2 February 2012.

On 11 February 2015 the Murcia first-instance judge authorised the placement of Mr Haddad's daughter with a foster family with a view to her adoption. On 13 March 2015 Mr Haddad and his wife lodged separate appeals. On 7 April 2016 the Murcia *Audiencia Provincial* dismissed the appeals and upheld the decision under challenge.

On 26 February 2016 the regional government terminated the placement of Mr Haddad's two sons in the care of the child protection department and authorised their return to their father. Mr Haddad lodged an *amparo* appeal with the Constitutional Court. He argued that the judicial decisions had prevented his daughter from being reunited with the family owing to serious errors in the various reports by the administrative authorities on which the domestic courts had based their reasoning. The Constitutional Court declared the *amparo* appeal inadmissible.

Relying on Article 8 (right to respect for private and family life), the applicant complains that the child protection department took no steps to help him re-establish contact with his daughter after his acquittal and the lifting of the temporary restraining orders.

## Leyla Can v. Turkey (no. 43140/08)

The applicant, Ms Leyla Can, is a Turkish national who was born in 1964 and lives in Mersin (Turkey).

The case concerns an application to have the forenames of an adopted child's biological parents replaced on the child's civil-status documents.

In 2006 Ms Can adopted a child born in September 1999. On completion of the adoption procedure the child was entered in the register with Ms Can's surname. The applicant was also allowed to change the child's forename. On 7 November 2006 Ms Can applied to the Tarsus District Court to have the forenames of the biological parents replaced on the child's civil-status documents. She argued that the indication of the biological parents' forenames on the child's identity papers, before her own surname, was liable to cause confusion and have negative consequences for the child. She requested that the civil-status documents should indicate her forename as the forename of the applicant's mother, and that her own father's forename should replace that of the child's biological father.

The District Court dismissed the application on the grounds that the adopted child had not been abandoned, that the identity of her biological parents was known, that her parentage had been established and that the amendment requested was liable to cause confusion as to that parentage. Lastly, the District Court held that the applicant, who had adopted the child on her own, could not request that the father and mother's forenames be replaced under the Civil Code.

The Court of Cassation dismissed an appeal on points of law by Ms Can. An application for rectification of that decision was likewise rejected.

The applicant mainly alleges a violation of her right to respect for her family life under Article 8 of the Convention.

## Mehmet Reşit Arslan and Orhan Bingöl v. Turkey (nos. 47121/06, 13988/07, and 34750/07)

The applicants, Mr Mehmet Reşit Arslan and Mr Orhan Bingöl, are two Turkish nationals who were born in 1966 and 1973. Mr Arslan and Mr Bingöl were convicted in 1992 and 1995 respectively of membership of an illegal armed organisation. They are both serving sentences of life imprisonment.

The case concerns the convicted prisoners' right to education.

On 13 March 2006 Mr Arslan requested the İzmir Prison authorities to allow him access to a computer and to the Internet as provided for, subject to certain conditions, by Law no. 5275 on the execution of sentences. The prison management and supervisory board issued an unfavourable opinion on the grounds that Mr Arslan maintained links inside prison with other inmates belonging to the illegal organisation and that he had not enrolled in any teaching establishment. The prison authorities upheld that opinion and refused his request.

On 3 April 2006 Mr Arslan applied to the İzmir post-sentencing judge, stating that prior to his conviction he had been a final-year medical student and that he wished to have access to audiovisual materials in order to pursue his higher-education studies. Failing that, he offered to pay for the necessary equipment from his own funds. The judge rejected the application. Mr Arslan applied to have that decision set aside but the İzmir Assize Court dismissed his application on the grounds that the post-sentencing judge's decision had not been in breach of the procedure or the law. While in detention in İzmir F-type Prison, Mr Arslan acquired an electronic device through the prison authorities which included a calculator function and an English-Turkish translation tool, and was given permission to use it in his cell. After he was transferred to a different prison in Bolu, the device was placed in safe keeping and his request to have it returned was refused on the grounds that it did not feature on the list of permitted items. Mr Arslan brought court actions which were rejected by the judicial authorities. After being transferred to Bolu high-security prison, he requested permission from the prison authorities to purchase and use a computer. The authorities refused the request. The applicant applied to the courts without success.

On 1 August 2006 Mr Bingöl requested permission from the prison authorities to use a computer and have access to the Internet. The deputy director of the prisons directorate at the Ministry of Justice refused the request. Mr Bingöl appealed to the post-sentencing judge against the refusal decision. His appeal was dismissed, and an application to have that decision set aside was rejected by the Kocaeli Assize Court.

Relying on Article 2 of Protocol No. 1 (right to education), the applicants complain of being prevented from using a computer and accessing the Internet. They maintain that these tools are essential in order for them to continue their higher-education studies and improve their general knowledge. Relying on Article 6 (right to a fair trial), Mr Arslan also complains of the lack of a hearing in the proceedings before the domestic courts.

## Chernega and Others v. Ukraine (no. 74768/10)

The applicants are 11 Ukrainian nationals who were born between in 1957 and 1983 and live in Kharkiv (Ukraine).

The case concerns the applicants' complaints of violence against them and interferences with their right to peaceful assembly during protests against the felling of trees in a public park.

The applicants took part in protests in May, June and July 2010 against the felling of trees in Gorky Park in Kharkiv as part of a road-building project. The area was guarded at the time by security guards hired by the contractor, but police officers were also in attendance.

In particular, the applicants allege that the ninth applicant was beaten on 27 May by unidentified men in orange vests while the seventh was assaulted several days later by men in black clothing with

badges with the letters MG, the initials of the security company, Municipal Guard, a municipality-owned firm hired by the main contractor.

The applicants allege that the third applicant was threatened by two workmen holding chainsaws, however, the Government states that it was the protesters themselves who approached the workmen, who had then retreated, holding their equipment out in front of them.

The first six applicants, the eighth and the tenth, were arrested during the protests and were charged with malicious insubordination to the police for refusing to leave the construction site.

The first and second applicants were found guilty of the charges and given sentences of 15 days administrative detention, reduced to nine days on appeal, however, they were not present at the appeal hearing. The sixth applicant was given 10 days administrative detention while the other applicants who had been arrested were fined or had their proceedings discontinued.

The protesters, including some of the applicants, complained to the authorities that they had been assaulted by workmen and security guards during the protests and that the police had done nothing to protect them. Neither the prosecutor's office nor the police instituted any criminal proceedings.

The third, seventh and ninth applicants complain under Article 3 (prohibition of torture) that they were ill-treated by security guards and workmen and that the State both failed to protect them and investigate their complaints effectively.

The first and second applicants complain under Article 6 § 1 (right to a fair trial) about the appeal court's failure to ensure their presence at their appeal hearings.

All the applicants complain of various violations of Article 11 (freedom of assembly and association).

## Thursday 20 June 2019

### Chiarello v. Germany (no. 497/17)

The case concerns the length of criminal proceedings.

The applicant, Gaetano Chiarello, is a German national who was born in 1977 and lives in Überherrn (Germany).

The applicant worked as a prison guard in Saarbrücken. In January 2008, the police questioned him about a mobile phone that had been smuggled into the prison in December 2006. In May 2008 he was accused of accepting a bribe of 200 euros (EUR), smuggling the telephone into the prison and of providing it to an inmate.

In January 2010 the main proceedings against Mr Chiarello were instituted before the District Court. After 14 hearings the court convicted him of taking a bribe and sentenced him to one year and four months' imprisonment, suspended on probation.

The applicant appealed, and the Regional Court acquitted him in November 2011. The public prosecutor lodged an appeal on points of law. In January 2013 the Court of Appeal set the judgment of the Regional Court aside and remitted the matter to the Regional Court. New appeal proceedings commenced and in April 2015 the Regional Court found Mr Chiarello guilty of taking a bribe and sentenced him to eight months' imprisonment. However, it suspended the execution of the sentence, put him on probation and declared that three months had been served owing to the excessively long proceedings.

Mr Chiarello filed an appeal on points of law that was dismissed by the Court of Appeal in April 2016. He then lodged a constitutional complaint but in July 2016 the Federal Constitutional Court decided not to admit it for adjudication.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), Mr Chiarello complains that the criminal proceedings against him were excessively long.

### A and B v. Croatia (no. 7144/15)

The applicants are two Croatian nationals, A and B, born respectively in 1984 and 2009. A is B's mother.

The case concerns A's complaint that the authorities failed properly to investigate her allegations that B's father had sexually abused the child.

In June 2014 A noticed B, then four and half years old, playing with her genitals, and the child also said that she had played like that with her father, C, every night before going to bed. A called a telephone hotline and made an appointment to visit a special child protection clinic.

A subsequently reported C to the police, which investigated her allegations. The child was examined by medical and psychological specialists during the course of the proceedings, in which the father also accused A of emotionally and physically abusing the child.

In December 2014 the State Attorney's Office decided to close the case, finding that it could not conclude that C had committed any prosecutable offence. A request by her for an investigating judge to take up the case was rejected, as was an appeal by her to the Constitutional Court.

A complains on behalf of B that the domestic authorities failed to provide a proper response to the allegations that the father sexually abused the child and that they had no effective remedy for that issue. They rely on Article 3 (prohibition of torture and inhuman treatment), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy).

### Loupas v. Greece (no. 21268/16)

The applicant, Ekaterini Loupas, is a Greek national who was born in 1959 and lives in Athens.

The case concerns disciplinary proceedings and proceedings before the Supreme Administrative Court as a result of which the applicant, who is currently an ambassador and who at the relevant time was the Greek Consul General in Geneva, was suspended from duty for six months without pay for a breach of official duties.

On 17 August 2007 the Geneva Employment Tribunal ordered Ms Loupas and the Hellenic Republic jointly to pay the sum of 181,845 Swiss francs to N.P., a Filipino national who had been employed in the applicant's residence as a member of the domestic staff from October 2001 to December 2005. The amount corresponded to a recalculation of N.P.'s salary and to payments for overtime and hours worked on public holidays.

On 20 September 2007 the Hellenic Republic and Ms Loupas lodged an appeal with the Geneva Employment Appeal Tribunal. On 5 February 2008 the Chair of the Tribunal declared the appeal inadmissible. The Hellenic Republic and Ms Loupas lodged an application with the Federal Court to have that decision set aside, without success. On the instructions of the Secretary General of the Ministry of Foreign Affairs, the Ministry's Inspector General opened an administrative inquiry. In a decision of 28 May 2009 the disciplinary board of the Ministry of Foreign Affairs dismissed the disciplinary charges against Ms Loupas alleging a breach of official duties, negligence in the performance of her duties and conduct incompatible with the dignified representation of the country. On 8 September 2009 the General Inspector of Public Administration applied to the Supreme Administrative Court requesting it to set aside the acquittal decision of the Foreign Affairs Ministry's disciplinary board. The Supreme Administrative Court set aside the decision and imposed a disciplinary penalty on the applicant in the form of a six-month temporary suspension without pay.

Relying on Article 6 § 1 (right to a fair hearing), the applicant complains that she was not given a fair hearing because the Supreme Administrative Court did not take into consideration some decisive

official documents, but based its ruling primarily on certain statements made by the rapporteur in the case to the disciplinary board of the Ministry of Foreign Affairs.

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 18 June 2019

| Name | Main application number |
|---|---|
| Belcencov v. the Republic of Moldova | 4457/09 |
| Bodiu v. the Republic of Moldova | 7516/10 |
| Canter and Magaleas v. the Republic of Moldova and Russia | 7529/10 |
| Coţofan v. the Republic of Moldova and Russia | 5659/07 |
| Sobco and Ghent v. the Republic of Moldova and Russia | 3060/07 |
| Vieru v. the Republic of Moldova | 25763/10 |
| Virprod-Lux S.R.L. v. the Republic of Moldova | 5067/08 |
| Akpınar v. Turkey | 34187/11 |
| Nebi Doğan v. Turkey | 56440/07 |
| Şimşek and Others v. Turkey | 46414/13 |
| Tanrıverdi and Others v. Turkey | 46444/13 |

## Thursday 20 June 2019

| Name | Main application number |
|---|---|
| Bertrand and Others v. France | 62196/14 |
| Lorin v. France | 4626/16 |
| Renou v. France | 60073/15 |
| G v. Germany | 9173/14 |
| Rezar v. Slovenia | 67415/14 |
| Kiss-Borlase v. Switzerland | 52877/11 |
| Akbulut v. Turkey | 36647/11 |
| Ateş and Others v. Turkey | 5939/12 |
| Damar v. Turkey | 35839/09 |
| Deniz v. Turkey | 54601/09 |
| Dinç v. Turkey | 73741/11 |
| H.A. v. Turkey | 35765/08 |
| Işık v. Turkey | 37829/17 |
| Lucas Electric Industry and Commerce JSC and Others v. Turkey | 34394/08 |
| Özkaya v. Turkey | 49671/10 |
| Şeran v. Turkey | 35814/09 |
| Subarsky and Uğraşın v. Turkey | 56502/07 |
| Tümen v. Turkey | 65151/10 |
| Tutar and Others v. Turkey | 32841/09 |
| Uyanık v. Turkey | 5592/10 |
| Yeşilkaya v. Turkey | 40891/17 |

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| Yücesoy v. Turkey | 1882/12 |
| Beley v. Ukraine | 34199/09 |
| Kotenko and Others v. Ukraine | 2575/09 |
| Kyriyenko v. Ukraine | 17967/09 |



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