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 eight judgments on Tuesday 24 November 2015 and 18 judgments and / or decisions on Thursday 26 November 2015.

*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 24 November 2015

Nenad Kovačević v. Croatia (application no. 38415/13)

The applicant, Nenad Kovačević, is a Croatian and Serbian national who was born in 1976 and is currently serving a prison sentence in Croatia. The case concerns his complaint about his pre-trial detention.

On 5 February 1997 Mr Kovačević was remanded in custody during a murder investigation in which he was a suspect. On 21 May 1997 he was released from custody and became unavailable to the Croatian authorities. On 8 February 1999, Mr Kovačević was found guilty of murder in his absence and sentenced to nine years' imprisonment. In July 2011 Mr Kovačević was arrested in Bosnia and Herzegovina and extradited to Croatia where he began to serve his prison sentence.

Mr Kovačević requested that the criminal proceedings against him be re-opened. This request was granted and on 4 October 2011 the execution of his sentence was stayed. On 5 October 2011 the court ordered Mr Kovačević's detention pending the re-trial holding that detention was necessary in order to avert the risk of absconding. Mr Kovačević appealed to the Supreme Court arguing, amongst other things, that the original indictment had not been served on him properly and that he had left Croatia for personal reasons. The Supreme Court dismissed his appeal against the detention order as ill-founded on 4 November 2011. The courts subsequently upheld Mr Kovačević's conviction in a final judgment of June 2013. His constitutional complaint challenging his conviction is currently still pending.

Relying in particular on Article 5 § 3 (right to liberty and security / entitlement to release pending trial) of the European Convention on Human Rights, Mr Kovačević complains that his pre-trial detention for six months following the re-opening of the criminal proceedings against him had been based on the misconception that he would abscond.

Noreikienė and Noreika v. Lithuania (no. 17285/08)
Tunaitis v. Lithuania (no. 42927/08)

The applicants, Vytautas Tunaitis, Daina Noreikienė and Algirdas Noreika are Lithuanian nationals who were born in 1959, 1965 and 1961 and live in Kaunas and Ramučiai (Lithuania) respectively. These cases concern the applicants' complaints that they have been deprived of their property without adequate compensation.

In the first case, the local authorities assigned in 1989 a plot of land measuring 0.03 hectares to Mr Tunaitis for the construction of a house. The city council confirmed the validity of that decision in 1991 and in 1994 Mr Tunaitis bought the land for a nominal price (approximately 28 euros (EUR)). In 2005, he signed a land purchase agreement and the plot was subsequently registered in the Land Registry in his name.

In the second case, the local authorities assigned in 1993 a plot of land measuring 1.97 hectares to Ms Noreikienė and Mr Noreika, a wife and husband, for individual farming. In 1996, the county administration authorised Ms Noreikienė to purchase the land for a nominal price (approximately EUR 1.7). In 2004 she signed a land purchase agreement and the plot was subsequently registered in the Land Registry in the couples' joint name.

In both cases a third party brought a civil claim seeking restoration of their ownership rights to the land arguing that they had already submitted requests for restitution of property and, as such, the land had been assigned and later sold to the applicants unlawfully. The plots in question were thus returned to the state and the applicants were awarded the equivalent of EUR 35 in the case of Mr Tunaitis and EUR 37 in the case of Ms Noreikienė and Mr Noreika. The applicants lodged cassation appeals which the Supreme Court refused to hear (in 2008 in the first case and in 2007 in the second case), holding that the appeals did not raise any important legal issues.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complain that they have been deprived of their property by decisions of the domestic courts and that they have not received adequate compensation.

Paliutis v. Lithuania (no. 34085/09)

The applicant, Antanas Paliutis, is a Lithuanian national who was born in 1957 and lives in Vilnius. The case concerns Mr Paliutis' complaint that the domestic courts had failed to examine his principle request in proceedings he had brought for reclassification of a plot of land.

Mr Paliutis owned a 0.53 hectare plot of land in the village of Tarailiai (Tauragė Region). In 2005 he submitted a request to the local authorities to change the classification of his land. The district council granted his request and prepared the detailed area plan. On 25 November 2005 the county administration refused to approve the plan, as required by domestic law, on the ground that it had not been prepared in accordance with the domestic laws governing the planning process.

Mr Paliutis complained to the relevant Inspectorate which held that the county administration's refusal to approve the plan had been unfounded. The district council resubmitted the plans to the county administration which again refused to review the previous decision. In December 2006, the Inspectorate notified the county administration that its refusal to approve the plan had been unfounded and urged it to review its previous decision. No action was taken.

In January 2007 Mr Paliutis lodged a claim with the regional administrative court asking that the county administration be ordered to approve the plan. Following the court's suggestion, Mr Paliutis subsequently added a request to annul the decision of 25 November 2005. In May 2007, the court dismissed the claim for annulment of the decision and did not make any findings in respect of Mr Paliutis' original claim. Mr Paliutis then appealed the judgment to the Supreme Administrative Court arguing that the first-instance court had not examined his request that the county administration approve the plan. On 15 February 2008 the Supreme Administrative Court upheld the appeal and returned the case for re-examination by the court of first-instance. In October 2008, the Regional Administrative Court dismissed the claim for annulment of the decision of 25 November 2005, holding that it had no competence to examine it, and did not address Mr Paliutis' claim that the county administration be ordered to approve the plan. In December 2008, the Supreme Court upheld this decision.

Relying on Article 6 § 1 (right to a fair hearing / access to court), Mr Paliutis complains that the domestic courts failed to hear his case, refusing in particular to address his claim that the county administration be ordered to approve the detailed area plan.

Paukštis v. Lithuania (no. 17467/07)

The applicant, Vytautas Alfonsas Paukštis, is a Lithuanian national, who was born in 1937 and lives in Vilnius. The case concerns his claim to the restoration of land previously belonging to his father.

In the 1930s Mr Paukštis' father bought a plot of 1.975 ha of land which is now part of the city of Vilnius. The property was nationalised in the 1940s. In 1991, Mr Paukštis asked the authorities to restore his rights to his father's land. At that time the maximum area of land returnable allowed under the Law on Restitution within the Vilnius city boundaries was 0.2 ha.. Mr Paukštis was conferred a right to obtain a plot of 0.18 ha of his father's land to build an individual house and in September 1999 Mr Paukštis was transferred the ownership of the plot. In May 2001, part of the remaining land was transferred to a third party. This transfer of land was subsequently found to have been unlawful by the authorities and Mr Paukštis was offered compensation in accordance with a principle established in Lithuania from 1990 of restricted restitution (under which compensation at market value was not a possibility).

In April 2002 the Law on Restitution was amended to allow for a maximum restitution of 1ha within the Vilnius city boundaries. Mr Paukštis asked the authorities to return to him the remaining part of his father's plot to which he was entitled, namely 0.82 ha. The authorities concluded that the land could not be returned to Mr Paukštis as it had been built on and contained a forest of State importance.

Mr Paukštis initiated court proceedings claiming that the State should pay him the market value of the land transferred unlawfully to the third party as well as the market value of the unreturned land. On 15 June 2006 the Vilnius Regional Administrative Court dismissed the claim as unfounded holding that Mr Paukštis should be compensated for the remaining part of his father's land but not at market value, in accordance with the restricted restitution principle. On 15 February 2007 the Supreme Administrative Court upheld the lower court's decision underlining that no market value compensation for land being compulsorily bought by the State was provided for by law.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Paukštis complains that the State authorities have not restored his title to his father's land or fairly compensated him for that land. Furthermore, he complains about the length of the restitution process in his case.

Siništaj and Others v. Montenegro (nos. 1451/10, 7260/10, and 7382/10)

The applicants in this case are Anton Siništaj and Viktor Siništaj, Albanian nationals, Pjetar Dedvukaj, Djon Dedvuković, and Nikola Ljekočević, Montenegrin nationals, and Kola Dedvukaj and Rok Dedvukaj, US nationals of Albanian origin. They were born in 1959, 1964, 1968, 1946, 1980, 1948, and 1958 respectively. Anton Siništaj, Viktor Siništaj, Djon Dedvuković, and Nikola Ljekočević live in Podgorica (Montenegro), Pjetar Dedvukaj lives in Windsor (Canada), Kola Dedvukaj lives in Farmington Hills (USA), and Rok Dedvukaj lives in Troy (USA).

The case concerns the applicants' complaints of torture and ill-treatment by the police and the lack of an effective investigation into those complaints.

On 9 September 2006 a special anti-terrorist group arrested 17 people, including the applicants, on suspicion of associating for the purpose of anti-constitutional activities, preparing actions against the constitutional order and security of Montenegro and illegal possession of weapons and explosives.

On 11 and 12 September 2006, the applicants made statements before the investigating judge of the High Court complaining that from the moment of their arrest and during the following days in police detention they had been ill-treated with the aim of extorting statements. In particular, they allege that they were beaten, deprived of food, verbally abused and threatened by police officers. The judge noted these allegations in the interrogation minutes as well as a number of injuries on some of the applicants, including cuts, scratches and bruises. Mr P. Dedvukaj's injuries were also subsequently confirmed in a report by a prison doctor.

On 14 September 2006 five of the applicants filed a criminal complaint with the investigating judge against unknown police officers for extorting statements, torture and ill-treatment. On 17 November 2006 a report was issued finding that it could not confirm the accused officers' involvement in the alleged ill-treatment. However, all the relevant documents were submitted to the State Prosecutor for further consideration. To date it appears that the criminal complaints have not been processed.

On 5 August 2008, five of the applicants were found guilty of anti-constitutional activities and two of the applicants were found guilty of illegal possession of weapons and explosives by the High Court. Mr K. Dedvukaj and Mr R. Dedvukaj were convicted on the basis of Mr A. Siništaj's statement made at the police station and the contents of his diary, found during a search of his flat. The High Court also ruled that the search of Mr A. Siništaj's flat had been conducted in line with the relevant legal provisions and that his rights had not been breached in the pre-trial proceedings. The applicants' appeal against the judgment of the High Court was upheld by the Court of Appeals on 18 June 2009. That Court of Appeals held, in particular, that there had been no procedural violations in the first-instance proceedings and that the judgment against the applicants was based on legally valid evidence, namely Mr A. Siništaj's statement at the police station and evidence obtained during the search, notably his diary. On 25 December 2009, the Supreme Court endorsed the reasoning of the High Court and the Court of Appeals. Four of the applicants lodged constitutional appeals which were dismissed on 23 July 2014 by the Constitutional Court, which held that the complaints of torture and ill-treatment were unsubstantiated.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicants all complain that they were tortured and ill-treated by police officers between 9 and 15 September 2006 and that the investigation into their complaints was ineffective. Mr K. Dedvukaj also complains under Article 3 about a lack of adequate medical care in detention. Further relying on Article 6 § 1 (right to a fair trial) and Article 3, Mr K. Dedvukaj and Mr R. Dedvukaj complain that they were convicted on the basis of evidence extorted from Mr A. Siništaj by torture and of his diary which had been obtained during an unlawful search.

Alexandrescu and Others v. Romania (no. 56842/08 and seven other applications)

The applicants, Carmen Doroteia Alexandrescu, Ion Băroiu, Iosif Bălaș-Salcoci, Ștefan Boran, Vladimir Ciobanu, Marin Dincă, Cristian Pațurcă, and Laura Veronica Stoica, are Romanian nationals who were born in 1950, 1958, 1939, 1957, 1948, 1938, 1964, and 1943 respectively and live in Bucharest.

These cases concern the applicants' complaints about the criminal proceedings with regard to the military authorities' violent crackdowns on demonstrations in Bucharest.

Between 21 and 23 December 1989 the applicants took part in the anti-communist demonstrations in Bucharest which led to the fall of the communist regime. In 1990 the military prosecutor's office opened a criminal investigation in relation to the violent crackdown on these demonstrations. The applicants were interviewed at the military prosecutor's office as witnesses in connection with the military's use of violence against civilians. The applicants lodged criminal complaints and joined the criminal proceedings as civil parties. The criminal investigation is apparently still pending before the domestic authorities.

Between 13 and 15 June 1990 another violent crackdown took place against demonstrators, including the applicants, in Bucharest protesting against the newly installed government. Armed intervention by the military forces, joined by thousands of miners who had been transported to Bucharest, resulted in more than a thousand civilian casualties, of whom a hundred were killed. Criminal investigations into the crimes committed during the violent repression of the demonstrations were opened in 1990 and the applicants were joined to the criminal proceedings as civil parties. A decision not to bring a prosecution was adopted on 17 June 2009 and an appeal was

dismissed on 3 September 2009 by the head prosecutor. These decisions have since been upheld by the High Court of Cassation and Justice.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicants complain that the length of the criminal proceedings concerning the events of December 1989, which they had joined as civil parties, was unreasonable. Furthermore, relying particular on Article 3 (prohibition of inhuman or degrading treatment), the applicants complain that there was a lack of an effective, impartial and through investigation capable of leading to the identification and punishment of those responsible for the violent crackdowns in December 1989 and June 1990 and the lack of an effective remedy before the national authorities.

Verdeș v. Romania (no. 6215/14)

The applicant, Daniel Alin Verdeș, is a Romanian national who was born in 1977 and is currently detained in Timişoara Prison (Romania). The case concerns the conditions of his detention and his access to medical treatment.

On 10 May 2013, Mr Verdes was detained in prison following his conviction and five-year sentence for aggravated theft. Mr Verdes complains that he has been detained in overcrowded and squalid cells lacking sufficient air and light and that, despite being a non-smoker, he has been detained with smokers. Furthermore, Mr Verdes complains that he has not received adequate medical treatment, in particular, the appropriate medication for his HIV.

Relying in essence on Article 3 (prohibition of inhuman or degrading treatment) Mr Verdes complains about the conditions of his detention and lack of appropriate medical treatment.

Thursday 26 November 2015

Regner v. the Czech Republic (no. 35289/11)

The applicant, Václav Regner, is a Czech national who was born in 1962 and lives in Prague.

The case concerns the fairness of the judicial review of an administrative decision revoking Mr Regner's security clearance, which was essential for him to be able to discharge a public function.

The National Security Authority decided to revoke the security clearance which Mr Regner had been granted to perform his duties as deputy to a Vice-Minister of Defence, on the grounds that he was a risk to national security. However, the decision made no reference to the confidential information on which it was based; the information in question was classified as "restricted" and, in accordance with the law, could not be disclosed to him.

On an appeal by Mr Regner, the President of the Authority confirmed the existence of the risk. An application by Mr Regner for judicial review was subsequently rejected by the Prague City Court, to which the documents in question had been transmitted by the Authority. Mr Regner and his lawyer were not authorised to consult them. The Supreme Administrative Court rejected his subsequent appeal, holding that the disclosure of the information would result in exposure of the intelligence service's working methods, disclosure of sources of information or attempts by the applicant to influence potential witnesses. Mr Regner then lodged an appeal with the Constitutional Court, complaining that the proceedings had been unfair. The Constitutional Court dismissed his appeal, finding that it was not always possible to ensure all the procedural guarantees of fairness where confidential information relating to national security was at stake.

Relying on Article 6 § 1 of the Convention (right to a fair hearing), Mr Regner complains that the administrative proceedings in his case were unfair in that it was impossible to have access to a decisive piece of evidence classified as confidential which had been made available to the courts by the defendant.

Ebrahimian v. France (no. 64846/11)

The applicant, Christiane Ebrahimian, is a French national who was born in 1951 and lives in Paris (France).

The case concerns the decision not to renew Ms Ebrahimian's contract of employment as a hospital social worker, because of her refusal to stop wearing a veil.

Ms Ebrahimian was recruited on a fixed-term contract within the public hospital service as a social worker in the psychiatric department of Nanterre Hospital and Social Care Centre. On 11 December 2000 the Director of Human Resources informed her that her contract would not be renewed, on account of her refusal to remove her headgear and following complaints from patients. The Director of Human Resources sent Ms Ebrahimian a written reminder of the *Conseil d'Etat*'s opinion of 3 May 2000, to the effect that the principles of freedom of conscience, the secular State and neutrality in public services prevented public officials from enjoying the right to manifest their religious beliefs while discharging their functions, and that wearing a visible symbol of religious affiliation constituted a breach of a public official's duties. Ms Ebrahimian applied to the Paris Administrative Court to set the decision aside; however, the court found that the decision not to renew her contract had been in accordance with the principles of the secular State and neutrality in public services. The Paris Administrative Court of Appeal, finding that the decision complained of related to a disciplinary matter, set it aside on grounds of procedural irregularity. In the light of that judgment, the Director of Human Resources invited Ms Ebrahimian to consult her file and, in a reasoned decision of 13 May 2005, confirmed to her once again that her contract would not be renewed. Ms Ebrahimian applied to the Versailles Administrative Court to set that decision aside, but her application was rejected. The Versailles Administrative Court of Appeal upheld that judgment. An appeal on points of law by the applicant was declared inadmissible by the *Conseil d'Etat*.

Relying on Article 9 (right to freedom of thought, conscience and religion), Ms Ebrahimian complains that the decision not to renew her contract as a social worker is in breach of her right to freedom to manifest her religion.

Annen v. Germany (no. 3690/10)

The applicant, Klaus Günter Annen, is a German national who was born in 1951 and lives in Weinheim (Germany). The case concerns a civil injunction by the German courts which notably prohibited him from further disseminating anti-abortion leaflets in the vicinity of a day clinic which performed abortions.

The leaflets distributed by Mr Annen in July 2005 as part of a campaign alleged, in bold letters, that the two doctors running the clinic, whose full names and address were mentioned, performed "unlawful abortions". This statement was followed by an explanation in smaller letters stating that the abortions were allowed by the German legislator and were not subject to criminal liability. The back of the leaflets included the following sentence: "The murder of human beings in Auschwitz was unlawful, but the morally degraded NS State allowed the murder of innocent people and did not make it subject to criminal liability." It was followed by a reference to a website run by Mr Annen, www.babycaust.de, which included a list of "abortion doctors", among them the two doctors running the day clinic.

In January 2007 a regional court granted a request by the two doctors for a civil injunction and ordered Mr Annen to stop distributing in the immediate vicinity of the clinic leaflets containing their names and the assertion that unlawful abortions were performed there. The court also ordered Mr Annen to stop mentioning the two doctors' names and addresses in the list of "abortion doctors" on the website run by him. Mr Annen's appeal against the injunction was rejected and eventually, in July 2009, the Federal Constitutional Court refused to admit his constitutional complaint for adjudication.

Mr Annen complains that the civil injunction issued against him violated his right under Article 10 (freedom of expression). He also complains of a breach of his right to a fair trial under Article 6 § 1 (right to a fair trial).

Mahamed Jama v. Malta (no. 10290/13)

The applicant, Farhiyo Mahamed Jama, is a Somali national who at the time of the introduction of the application was detained in the context of immigration, in Malta. The case concerns, in particular, her complaint about the alleged unlawfulness of her detention for more than eight months, and about the poor conditions in which she was kept.

Upon her arrival in Malta by boat in May 2012 Ms Mahamed Jama was registered by the immigration police and presented with a return decision, which stated that she was a prohibited immigrant, and a removal order. She was placed in detention. A few days later she appealed against the return decision and subsequently applied for asylum. In her asylum application she stated that she was 16 years old, maintaining that she was born in 1996. About two months after her arrival in Malta she was called for an interview with the authorities with a view to assessing the veracity of her claim that she was a minor. As the interview was not conclusive, she was taken for an X-ray exam for age assessment another two months later. An age assessment decision, according to which she was not a minor, was taken in January 2013. In February 2013 she was granted subsidiary protection in Malta and, five days after that decision, she was released from detention.

According to her submissions, Ms Mahamed Jama was detained in prison-like, poor conditions. In particular she maintains: that the detention facility was overcrowded; that it was overheated in summer and unbearably cold in winter; that there was not enough storage place for food, so that food was exposed to insects; that she was not provided with sufficient and adequate clothing and hygiene items; that there was no possibility for any useful activity, no internet access and almost no possibilities to make long-distance phone calls.

Ms Mahamed Jama complains that the conditions of her detention were in breach of Article 3 (prohibition of inhuman or degrading treatment). Relying further on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), she complains that she did not have an adequate remedy to challenge the lawfulness of her detention. Moreover, she maintains that her detention for more than eight months was arbitrary and unlawful, in violation of Article 5 § 1 (right to liberty and security), and that the return decision, which was provided to her in English, a language she did not understand, did not contain sufficient reasons for her to challenge the detention, in violation of Article 5 § 2 (right to be informed promptly of the reasons for arrest).

Basenko v. Ukraine (no. 24213/08)

The applicant, Aleksandr Basenko, is a Ukrainian national who was born in 1958 and lives in Kyiv. The case concerns his complaint of having been ill-treated by an employee of a public transport company and of the lack of an effective investigation in that respect.

In February 2002, following a disagreement between Mr Basenko and two ticket inspectors on a tram in Kyiv as to whether he had a valid ticket, the three men got off the tram. On their way to the tram depot, one of the inspectors kicked Mr Basenko, as a response to which he used a tear gas spray against the inspectors. One of the inspectors then knocked Mr Basenko in the knee, causing a fracture, as a result of which he could not get up. He was helped by bystanders, who called an ambulance. He maintains that he received treatment for the injury until 2005.

Shortly after the incident Mr Basenko reported it to the police. In March 2002 a police investigator refused to institute criminal proceedings, but in December 2002 the district prosecutor quashed the decision and opened criminal proceedings. The investigation was subsequently suspended and resumed on several occasions. In April 2005 one of the inspectors was charged with infliction of bodily injuries of medium gravity and eventually, in November 2007, he was convicted as charged

and sentenced to two years' imprisonment, suspended. A civil claim lodged in parallel by Mr Basenko against the transport company, seeking damages, was rejected by the courts in a decision eventually upheld in November 2007.

Relying in substance on Article 3 (prohibition of inhuman or degrading treatment), Mr Basenko complains of the injuries he suffered and maintains that the investigation into his complaints was ineffective. In particular, the investigation took an unjustifiably long time and he was not informed of its progress or the conviction of one of the inspectors, as a result of which he was prevented from appealing against that judgment. He further relies on Article 13 (right to an effective remedy), complaining that he did not have an effective remedy in respect of the treatment he suffered.

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.

Vazvan v. Finland (no. 61815/13)
Bazios v. Greece (no. 51345/13)
Parrillo v. Italy (no. 43028/05)
Gubenko v. Latvia (no. 6674/06)
Kibermanis v. Latvia (no. 42065/06)
E.M. v. the Netherlands (no. 32452/14)
J.A. and Others v. the Netherlands (no. 21459/14)
Biserica Evanghelică Română - Parohia Poenarii Burchii v. Romania (no. 44040/06)
Otegi Mondragon and Others v. Spain (nos. 4184/15, 4317/15, 4323/15, 5028/15 and 5053/15)
A. M. v. Switzerland (no. 37466/13)
Abubekir Polat v. Turkey (no. 8494/07)
Aydemir v. Turkey (no. 39008/08)
Karabay v. Turkey (no. 41639/08)

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