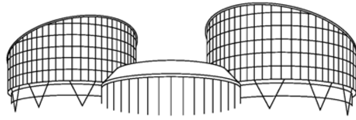
EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 248 (2017)
21.07.2017

Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 22 judgments on Tuesday 25 July 2017 and 17 judgments and / or decisions on Thursday 27 July 2017.

*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 25 July 2017

Panorama Ltd and Miličić v. Bosnia and Herzegovina (applications nos. 69997/10 and 74793/11)

The applicants in this case are Panorama Ltd, a limited liability company based in Brčko District, and Đuro Miličić, a citizen of Bosnia and Herzegovina, who was born in 1950 and lives in Orašje (Bosnia and Herzegovina). The case concerns non-enforcement of domestic judgments in the applicants' favour with regard to property claims from the 1992-95 war.

Both applicants were successful in claims against the State, one for the seizure of property of approximately 266,370 euros and another for the destruction of property of approximately 35,260 euros. The judgments in their favour became final in January 2009 and November 2007, respectively. At the time the applicants' claims were examined domestic law provided that default interest did not apply to war damages. However, the civil courts applied the general rules of tort law and awarded default interest to the applicants. The principal award and legal fees were thus paid to both applicants, but the Federal Ministry of Finance refused to authorise payment of the interest and the final judgments in their favour in this respect have not as yet been enforced.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) 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 authorities' prolonged failure to comply with binding and enforceable judgments.

M v. the Netherlands (no. 2156/10)

The applicant, Mr M, is a Netherlands national. The case concerns his criminal trial for leaking State secrets.

Mr M is a former member of the Netherlands secret service AIVD and in 2004 was charged with having disclosed sensitive information to unauthorised persons, including terrorist suspects. Prior to his trial, he was informed by the secret service that it would be constitutive of a further criminal offence if he were to discuss matters covered by his duty of secrecy with anyone, including his counsel. Restrictions were also put on the defence's access to documents, with some only being provided in a redacted form.

During the initial proceedings, the applicant's counsel protested against the restrictions affecting the defence, particularly regarding the communication between themselves and the applicant. A conditional exemption was therefore granted by the secret service which permitted Mr M to disclose, only to his lawyers, information strictly necessary for his defence.

During the appeal proceedings, the applicant further complained unsuccessfully about the fact that he was not permitted to give the names of the secret service members he wished to call as

witnesses to the Court of Appeal. Any members who did appear as witnesses were allowed to refuse to answer questions from the defence that might compromise the secret service's intelligence. Furthermore, their voices and appearances were disguised in order to conceal their identities.

The applicant was convicted by the Regional Court and sentenced to four years and six months' imprisonment, which sentence was reduced by the Court of Appeal to four years and by the Supreme Court to three years and ten months.

Relying on Article 6 §§ 1 (right to a fair trial) and 3 (b) (c) (d) (right to legal assistance of own choosing, right to adequate time and facilities for preparation of defence and right to obtain attendance and examination of witnesses) of the Convention, Mr M complains that his criminal proceedings were unfair. In particular, he complains that the secret service had exercised decisive control over the evidence, restricting his and the domestic courts' access to it and controlling its use, thus preventing him from instructing his defence counsel effectively.

Carvalho Pinto de Sousa Morais v. Portugal (no. 17484/15)

The applicant, Maria Ivone Carvalho Pinto de Sousa Morais, is a Portuguese national who was born in 1945 and lives in Bobadela (Portugal). The case concerns a decision to reduce the amount of compensation she was awarded as a result of a medical error.

The applicant, suffering from a gynaecological disease, had surgery in May 1995. The operation left here in intense pain and led to a loss of sensation in the vagina, incontinence, difficulty walking and sitting, and having sexual relations. She found out that a pudendal nerve had been injured during the operation, and she therefore brought a civil action against the hospital for damages. At first-instance she was awarded 80,000 euros (EUR) for the physical and mental suffering caused by the medical error and EUR 16,000 for the services of a maid to help with household tasks. However, on appeal, the Supreme Administrative Court, although confirming the findings of the first-instance court, found those awards excessive and reduced them to EUR 50,000 and EUR 6,000, respectively. It found in particular that her pain had been aggravated during the surgery, but that it was not new and had not resulted exclusively from the injury to the nerve; and that, in any case, she was already 50 years old at the time of the surgery and the mother of two children, an age when sexuality was not as important. It further found that she was unlikely to be in need of a full time maid at the time as, considering the age of her children, she only needed to take care of her husband.

Relying on Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life), the applicant alleges that the Supreme Administrative Court's decision to reduce her compensation was discriminatory, in particular because it had disregarded the importance of a sex life for her as a woman.

Annenkov and Others v. Russia (no. 31475/10)

The case concerns a group of entrepreneurs who participated in sit-ins at their local market in protest against a plan to demolish the market and build a shopping centre. The entrepreneurs – the applicants – are 14 Russian nationals who were born between 1938 and 1969 and live in Voronezh or the Voronezh Region (Russia). They all either owned businesses at Voronezh market or worked as vendors for these businesses.

On 7 and 10 August 2009 two police operations were carried out to clear the occupation of the marketplace. A number of arrests were made during both operations, which included certain of the applicants. Administrative-offence cases were brought against the applicants in which the courts considered that they had disobeyed orders from the police. All those applicants who were men – except for one injured man (Mr Annenkov) – were sentenced to up to ten days' administrative detention and all the women applicants were given fines. The decisions against the women applicants were however subsequently set aside and returned to the police; no further action has been taken since.

Four of the applicants were injured during the operation on 7 August, sustaining bruising and concussion. Mr Annenkov alleged that he had been struck and fell to the ground; and the others that they had either been grabbed or had their hair pulled before being dragged along on the ground. A criminal complaint was lodged against the police, but the investigating authorities issued a number of refusals to institute criminal proceedings, finding that the applicants could have sustained their injuries when resisting arrest. These decisions were all however overruled, most recently in October 2012, and a criminal case has since been opened.

Relying on Article 3 (prohibition of inhuman or degrading treatment), four of the applicants allege that the police used excessive force against them and that no effective investigation was carried out into their complaint. Further relying on Article 11 (freedom of assembly and association), they also complain about the termination of their participation in the sit-ins and their ensuing convictions of administrative offences. Lastly, four applicants complain that, in the administrative offence proceedings, female defendants were only given a fine, whereas male defendants (except for Mr Annenkov) were sentenced to administrative detention, alleging that this was discriminatory, in breach of Article 14 (prohibition of discrimination) in conjunction with Article 5 (right to liberty and security) and Article 6 § 1 (right to a fair hearing).

Eskerkhanov and Others v. Russia (nos. 18496/16, 61249/16 and 61253/16)

The applicants, Temirlan Eskerkhanov, Anzor Gubashev and Shadid Gubashev, are all Russian nationals born in 1980, 1981 and 1983 respectively. The applicants were all arrested in March 2015 on suspicion of murdering a Russian politician, Boris Nemtsov, and have been in pre-trial detention ever since. The case concerns their various complaints about: the conditions of their detention in Moscow remand prisons and convoy cells, notably on account of overcrowding; their transfer to and from hearings on their cases in cramped prison vans; the length of their pre-trial detention; and the excessively long proceedings in the judicial review of their detention.

In December 2016 and January 2017 the applicants' lawyers disclosed to the media the terms of the unilateral declaration submitted by the Government within the proceedings before the European Court of Human Rights (no. 18496/16) and the terms of the friendly-settlement negotiations between the parties (nos. 61249/16, and 61253/16).

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), the applicants complain that the conditions of their detention and transport were inadequate and that they did not have an effective remedy against inadequate conditions of transport. They further complain, relying on Article 5 § 3 (right to a trial within a reasonable time or release pending trial), about the length of their pre-trial detention. Finally, relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), they complain about the excessive length of the proceedings for the judicial review of their detention.

Shvidkiye v. Russia (no. 69820/10)

The applicants, Natalya Shvidkaya and Yelizaveta Shvidkaya, mother and daughter, are Russian nationals who were born in 1973 and 1996 respectively and live in Blagoveshchensk, the Amurskaya Region (Russia). The case concerns their eviction from State-owned housing.

In 2002 the first applicant bought a flat in the Kaluga Region and, with the help of an agent, exchanged it for a flat in Moscow occupied by K. under a social tenancy agreement. The exchange was authorised by the relevant state agencies and the first applicant paid the agent for arranging it. However, three years later, a district court in Moscow found the agent guilty of fraud for having falsified a court judgment authorising the assignment of the flat to K. and then fraudulently arranging for the exchange of flats between K. and the first applicant. The city authorities subsequently brought proceedings against the first applicant and K. claiming that the transactions with the flat were unlawful and seeking their annulment. In 2010 the domestic courts invalidated

K.'s social tenancy agreement, the exchange agreement and ordered the applicants' eviction. It further ordered K. to pay the first applicant the value of the flat in the Kaluga Region which had been sold in the meantime.

Relying on Article 8 (right to respect for private and family life and the home), Ms Shvidkaya and her daughter complain about their eviction from the home they had maintained for nearly seven years.

Smolentsev v. Russia (no. 46349/09)

The applicant, Andrey Smolentsev, is a Russian national who was born in 1976 and lives in Barnaul (Russia). The case concerns an allegation of police brutality.

Mr Smolentsev has been mentally disabled since childhood and lacked legal capacity since 1999. On 28 August 2007, he was arrested on suspicion of robbery and taken to Industrialniy district police station of Barnaul. When Mr Smolentsev's mother arrived at the police station several hours later, she discovered he had injuries on his face. On the same date ambulance medics and doctors at a local hospital found that he had a broken nose and a chest contusion. She complained to the prosecutor's office the next day following an allegation by her son that he had been beaten by the police officers who had arrested him. After a delay of more than three months, a criminal case was opened in respect of the alleged assault. The proceedings have been suspended on 16 occasions and appear to be ongoing to the present day, 10 years after the events complained of.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Smolentsev complains in particular of ill-treatment by the police after his arrest and of the lack of an effective investigation into his allegations of ill-treatment.

Kuc v. Slovakia (no. 37498/14)

The applicant, Ladislav Kuc, is a Slovak national who was born in 1979 and is currently detained in Trenčín hospital for charged and convicted persons (Slovakia). The case concerns the length of and justification for his pre-trial detention on charges of endangering public safety.

In January 2012, Mr Kuc, who has a history of psychiatric disorder, was arrested for sending home-made explosive devices to various individuals and exploding another device next to a fast food outlet, all with a view to promoting animal rights. A district court ordered that he be detained pending trial in view of the gravity of the offences against him and the risk of his reoffending. His detention was subsequently extended – the risk of absconding having been added to the grounds for detention in May 2012 – until his conviction in June 2013 and sentencing to 25 years in prison. That conviction was however quashed on appeal by the Regional Court in October 2013 and the case remitted to the district court due to conflicting expert reports regarding his mental health and ability to understand the illegality of his actions. The Regional Court decided to keep Mr Kuc in detention in the meantime, citing the same grounds as the lower court. Mr Kuc applied for release in December 2013, referring to his mental health condition and need for psychiatric treatment. His application was however dismissed, again on the grounds of the seriousness of the charges against him, combined with the risk of his reoffending and absconding. A constitutional complaint lodged by Mr Kuc was also later dismissed, in April 2014.

Relying on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr Kuc complains about the excessive length of and lack of relevant and sufficient grounds for his pre-trial detention, arguing in particular that the domestic courts had failed to take into account his mental disorder when assessing the necessity for his continued detention.

Khlebik v. Ukraine (no. 2945/16)

The applicant, Oleksandr Khlebik, is a Ukrainian national who was born in 1974 and lives in Nizhyn in the Chernihiv Region (Ukraine). The case concerns his complaint that the domestic courts were unable to examine his appeal against his conviction for a series of armed attacks in the Luhansk

Region, because his case file was blocked in an area that was not under the Ukrainian Government's control.

In April 2013 Mr Khlebik was convicted by a court in the Luhansk Region of, among other things, banditry and armed robbery; he was sentenced to eight years and nine months' imprisonment. His appeal against this conviction was still pending when hostilities started in Eastern Ukraine in April 2014. He remained detained in Starobilsk remand prison, awaiting examination of his appeal, located in the part of the Luhansk Region controlled by the Ukrainian Government. However, his case file remained with the Court of Appeal, in Luhansk, which is not under Government control. When the Court of Appeal was relocated to Sieverodonetsk, in the Government-controlled area, Mr Khlebik complained about the delay in the examination of his appeal. He was told that the appeal court could not examine his case as his file was blocked in Luhansk. He also applied for release on several occasions between May 2015 and February 2016, without success. He was nevertheless released in March 2016 as he benefitted from a legislative reform which had in the meantime been adopted permitting release of individuals who have served at least half of their sentence while in detention on remand. According to most recent information, Mr Khlebik's appeal against his conviction is currently still pending before the Court of Appeal.

Relying on Article 5 §§ 1 and 5 (right to liberty and security/right to compensation), Mr Khlebik complains about his detention from April 2013 to March 2016. Further relying on Article 6 § 1 (right to a fair trial within a reasonable time) and Article 2 of Protocol No. 7 (right of appeal in criminal matters), he also complains about the domestic authorities' failure to enact legislation allowing for his appeal to be effectively examined.

Rostovtsev v. Ukraine (no. 2728/16)

The applicant, Oleksandr Rostovtsev, is a Ukrainian national who was born in 1983 and lives in Kyiv. The case concerns his complaint that he was not allowed to appeal his conviction for drug possession.

During the course of his trial in 2015 on charges of unlawful purchase and possession of narcotics, Mr Rostovtsev, who was not represented by counsel, admitted to having purchased a narcotic-like pain reliever for his own use because he had not been feeling well. The trial court, interpreting this as an unqualified guilty plea, convicted him as charged and sentenced him to two years and six months' imprisonment. Mr Rostovtsev appealed his conviction, arguing that at trial he had admitted only to the facts alleged by the prosecutor but had not agreed with their legal classification. He argued that his acts should have been classified as a breach of the regulation for the purchase and circulation of drugs, a crime which is punishable by a lesser sentence. His appeal was however dismissed because the law which allows for uncontested circumstances to go unexamined also states that, once the parties agree to the circumstances, they cannot be appealed.

Relying on Article 2 of Protocol No. 7 (right of appeal in criminal matters), Mr Rostovtsev complains that he was deprived of the right to appeal against the judgment in his criminal case. In particular, he argues that he could not have foreseen that, by admitting to facts as established during his trial, he was forgoing the possibility of appealing against his conviction.

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.

Austin and Budiartini v. Portugal (no. 70692/13)
Mateus Pereira da Silva v. Portugal (no. 67081/13)
Babynin v. Russia (no. 12239/03)

Bulava v. Russia (no. 62812/12)
Dvoretskiy v. Russia (no. 57426/14)
Korobeynikov v. Russia (no. 6131/07)
Plotnikov v. Russia (no. 39595/06)
Rastorguyev and Others v. Russia (nos. 11808/15, 12068/15, 12253/15, 12472/15 and 25624/15)
Shestakov v. Russia (no. 13308/07)
Yakovenko v. Russia (no. 48528/09)
Yankovskiy v. Russia (no. 24051/11)
Magát v. Slovakia (no. 44646/15)

Thursday 27 July 2017

Mockienė v. Lithuania (no. 75916/13)

The applicant, Danutė Mockienė, is a Lithuanian national who was born in 1959 and lives in Mažeikiai. The case concerns the reduction of welfare benefits during the economic crisis in Lithuania in 2010-2013.

The applicant was a law enforcement officer and received a service pension after her discharge from the Prisons Department in January 2004. Such a service pension is paid to individuals for their merits or service to the State; it is not linked to social insurance contributions. On 1 January 2010 a provisional law entered into force, which reduced various welfare benefits, including service pensions, for the duration of the economic crisis. As a result, from 1 January 2010 until 31 December 2013 Ms Mockienė's service pension was reduced by approximately 15%. The law did not entitle her to compensation for the reduction during that period.

Relying on Article 1 of Protocol 1 (protection of property), Ms Mockienė complains about the reduction in her service pension without compensation. She further complains under Article 14 (prohibition of discrimination) that she was discriminated against because other categories of pension beneficiaries – in particular those who received retirement pensions – had been entitled to compensation for their reduced benefits.

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Čiapas v. Lithuania (no. 62564/13)
Galea and Pavia v. Malta (nos. 77209/16 and 77225/16)
Avzhiyan v. Russia (no. 10384/12)
Baydin v. Russia (no. 33027/05)
Butuzov v. Russia (no. 10217/04)
Chumak v. Russia (no. 49250/07)
Kashchayev v. Russia (no. 25756/12)
Khubiyev v. Russia (no. 37285/12)
Pogosyan v. Russia (no. 24349/05)
S.B. v. Russia (no. 76558/16)
Suslova v. Russia (no. 44214/11)
Tarnovskiy v. Russia (no. 7081/11)
Zakharchenko v. Russia (no. 24728/12)
Skenderi and Others v. Serbia (nos. 15090/08, 27952/10, 35372/10, 35374/10 and 47575/12)
Britovsek v. Slovenia (no. 29007/08)

Güngör v. Turkey (no. 14486/09)

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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.