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

Press Release
issued by the Registrar of the Court

ECHR 181 (2015)
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Judgments and decisions of 4 June 2015

The European Court of Human Rights has today notified in writing four judgments[1] and 15 decisions[2] :

three Chamber judgments are summarised below; for one other, in the case of *Chitos v. Greece (application no. 51637/12)*, a separate press release has been issued;

for two decisions, in the cases of *Ljubljanska banka d.d. v. Croatia (no. 29003/07)* and *Abramyan and Others v. Russia (nos. 38951/13 and 59611/13)*, separate press releases have also been issued;

the 13 remaining decisions can be consulted on *Hudoc* and do not appear in this press release.

The judgments in French below are indicated with an asterisk (*).

Moreno Diaz Peña and Others v. Portugal (application no. 44262/10)*

The applicants, Pilar Moreno Diaz Peña, Joaquin Peña Moreno, Marta Pilar Peña Moreno, Paloma de la Ascención Francisca Peña Moreno, Francisco Javier Peña Moreno and Maria de las Mercedes Peña y Moreno are six Spanish nationals. They were born in 1951, 1953, 1957, 1958 and 1961 respectively and live in Algès and Cascais. They are the rightful heirs of their parents, who owned land (covering a total area of 24,375 m²) in the municipality of Oeiras. The applicants' father was also the President of the Governing Board of the "Habitat" company.

The case concerned the amount of compensation awarded after proceedings relating to the expropriation of the land in question, the length of the proceedings and the lack of an effective domestic remedy.

In March 1962 the municipality of Oeiras concluded an initial contract – which was subsequently amended – with the applicants' parents and the "Habitat" company, relating to the development of the section of the valley where the land in question was situated. In October 1980, the State Secretary for Public Works ordered the emergency expropriation of the land in the public interest. In November 1982 an arbitration board established the amount of compensation for the expropriation at the equivalent of 4,863 euros (EUR), considering that the land was only exploitable for farming purposes. In April 1990 a domestic court ordered the judicial sale of the land to the Directorate General of Educational Establishments against payment of the compensation decided by the arbitration board. The applicants contested the amount to be paid in compensation. Further expert reports were ordered. A first judgment delivered in July 1992 set the expropriation compensation at EUR 14,963,936. The public prosecutor appealed against that judgment. In 2010 a sum of EUR 2,700,741 was paid to the applicants.

Relying on Articles 6 § 1 (right to a fair trial within a reasonable time) and 13 (right to an effective remedy) of the European Convention on Human Rights, the applicants alleged that the length of proceedings had been excessive and complained of the lack of effectiveness of the civil action to

[1] Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

[2] Inadmissibility and strike-out decisions are final.

establish non-contractual liability for challenging the excessive length of proceedings. Relying in particular on Article 1 (protection of property) of Protocol No. 1 to the Convention, they submitted that the proceedings had been unfair and that the compensation which had eventually been awarded to them had been insufficient.

Violation of Article 6 § 1
Violation of Article 13
Violation of Article 1 of Protocol No. 1

Just satisfaction: The Court reserved the question of the application of Article 41 (just satisfaction) of the Convention for examination at a later date.

J.K. and Others v. Sweden (no. 59166/12)

The case concerned a family's threatened deportation to Iraq.

The applicants, a married couple and their son, are Iraqi nationals who were born in 1964, 1965, and 2000, respectively. They all applied for asylum in Sweden in 2011. In the ensuing domestic proceedings, they claimed that they were at risk of persecution by al-Qaeda if deported to Iraq on account of the applicant husband having run a business in Baghdad with exclusively American clients. The family had been the target of a number of attacks: the husband had had to stay in hospital for three months in 2004 following a murder attempt by al-Qaeda; a bomb was placed next to their house in 2006; their home and business stock was destroyed in a fire in 2006 and 2008; and the husband and his daughter were shot at in their car in 2008, resulting in the daughter dying in hospital shortly afterwards. The husband stated that they had constantly been on the move since 2008 and had not therefore received any more threats. Their case was examined by the Migration Board and the Migration Court which found their story credible and acknowledged that they had been the victims of severe violence and harassment. However, those acts had been committed several years before and the applicant husband had ended his business with the Americans in 2008 and had stayed in Baghdad for two years after that without substantiating that the family had been the victim of any further attacks. In the event that the family was still under threat, they should seek protection from the Iraqi authorities. The Migration Court of Appeal refused leave to appeal in August 2012. Subsequently, in September 2012, the Migration Board refused their request for reconsideration of their case. The family's deportation was, however, then suspended in September 2012 on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Swedish Government that the applicants should not be expelled to Iraq whilst the Court was considering their case.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) of the Convention, the applicant family alleged that, if returned to Iraq, they would be at risk of persecution and ill-treatment by al-Qaeda who had infiltrated the domestic authorities, which had not therefore been in a position to protect them.

No violation of Article 3 – in the event of the applicants' deportation to Iraq

Interim measure (Rule 39 of the Rules of Court) – not to deport the applicants to Iraq – still in force until judgment becomes final or until further order

Ruslan Yakovenko v. Ukraine (no. 5425/11)

The applicant, Ruslan Yakovenko, is a Ukrainian national who was born in 1979 and lives in Korolivka, the Kyiv region. The case concerned his complaint about being kept in detention beyond the duration of his prison sentence on account of the procedure under Ukrainian law for appealing against a judgment in criminal proceedings.

Mr Yakovenko, in pre-trial detention on charges of causing grievous bodily harm, was sentenced on 12 July 2010 to a term of imprisonment by the trial court. His sentence was due to expire three days after sentencing since he had already spent a long period in pre-trial detention. However, the trial court decided to keep Mr Yakovenko in detention, as a preventive measure, pending the trial court's judgment becoming final, even after his prison sentence had expired. The procedure under Ukrainian law for Mr Yakovenko to appeal the judgment against him meant that if he did not appeal, his preventive detention would last 12 days until the trial court judgment became final, given the 15 days' time-limit for lodging appeals; if Mr Yakovenko had appealed, he would have delayed the trial court's judgment becoming final for an unspecified period of time and he would, thereby, have prolonged his preventive detention indefinitely.

On expiry of Mr Yakovenko's sentence, he and his lawyer requested the prison administration to release him on two occasions, without success, on the ground that he could not be released until such time as the preventive measure had been lifted or the judgment had become final. On 27 July 2010 the 15-day time-limit for lodging appeals against the 12 July judgment expired, and, in the absence of any appeal, it became final. Mr Yakovenko was finally released on 29 July 2010 when the pre-trial detention centre received the court order to execute the final judgment.

Mr Yakovenko complained under Article 5 § 1 (a) and (c) (right to liberty and security) that his detention from 15 to 29 July had been unlawful. He also complained under Article 2 (right of appeal in criminal matters) of Protocol No. 7 that he had effectively been deprived of the right to challenge on appeal the judgment in his criminal case, maintaining that, had he decided to appeal, he would have considerably delayed his release.

Violation of Article 5 § 1
Violation of Article 2 of Protocol No. 7

Just satisfaction: 3,000 euros (EUR) (non-pecuniary damage) and EUR 1,330 (costs and expenses)

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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.