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

Press Release
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Judgments and decisions of 1 December 2016

The European Court of Human Rights has today notified in writing five judgments[1] and 41 decisions[2] :

four Chamber judgments are summarised below; for one other, in the case of *Gerasimenko and Others v. Russia* (applications nos. 5821/10 and 65523/12), a separate press release has been issued;

the 41 decisions can be consulted on *Hudoc* and do not appear in this press release.

The judgments below are available only in English.

Salem v. Denmark (application no. 77036/11)

The applicant, Mahmoud Kalil Salem, is a stateless Palestinian from Lebanon, who was born in 1969 in Lebanon. The case concerned his expulsion from Denmark.

Mr Salem entered Denmark in 1993 at the age of 23. One year later, having married a Danish national of Lebanese origin, he was granted a residence permit. The couple had eight children. Mr Salem was also granted asylum in 2000.

In June 2010 Mr Salem was convicted of 18 counts of criminal offences committed between 2006 and 2009, including drug trafficking, drug dealing, coercion by violence and threats, blackmail, theft, escaping while under arrest and possession of weapons. The court found that Mr Salem had had a leading role in the trafficking of over 100 kilos of hashish and 200 grams of cocaine; and that he had used violence against associates and clients. He was sentenced to five years' imprisonment, and an expulsion that was suspended with two years' probation.

On appeal in the High Court of Eastern Denmark, the conviction was upheld in part, though the sentence was increased to six years' imprisonment. The public prosecution appealed to the Supreme Court against the suspension of the expulsion order.

In a judgment of 12 October 2011, the Supreme Court decided to expel Mr Salem without suspension, but with a life-long ban on his return. Whilst recognising that Mr Salem had eight minor children in Denmark, the court emphasised his extensive and serious criminal record; and that he was not well-integrated into Danish society (but still had ties to Lebanon).

In 2014 the Danish Immigration Service found that Mr Salem could be returned to Lebanon, and this decision was upheld on appeal by the Refugee Appeals Board. Mr Salem's request that the European Court of Human Rights should order an injunction to prevent his deportation was refused on 23 December 2014. It appears that he was deported to Lebanon shortly afterwards.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Mr Salem complained that his expulsion from Denmark was a breach of his right to respect for family life, due to his separation from his eight children.

[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.

No violation of Article 8

Tomina and Others v. Russia (nos. 20578/08, 21159/08, 22903/08, 24519/08, 24728/08, 25084/08, 25558/08, 25559/08, 27555/08, 27568/08, 28031/08, 30511/08, 31038/08, 45120/08, 45124/08, 45131/08, 45133/08, 45141/08, 45167/08, and 45173/08)

The applicants are 21 Russian nationals born between 1949 and 2006. The case concerned their loss of ownership of rooms that they had purchased, which had originally been the property of the State.

In 1993 a State-owned enterprise named Samaraavtotrans was privatised. Under the privatisation plan, the residential buildings of the enterprise were to be transferred to the Samara municipality, whilst the administrative buildings were to be taken over by a newly privatised company. The plan referred to a certain dormitory building as an administrative building, and it was transferred to the new private company. Separate rooms in the building were then re-sold to various third parties, including the applicants. The applicants moved into the rooms and resided there.

In August 2002 the Samara Region Commercial Court found the privatisation plan to be null and void. The Promyshlenniy district prosecutor then brought an action in the interests of the municipality against the private company, its owners and the new owners of the rooms (including the applicants), requesting that the court return the title of the building to the municipality, on the basis that the privatisation plan and also the subsequent transactions were null and void.

In November 2007 the Promyshlenniy District Court of Samara allowed the claim of the prosecutor in full. Whilst recognising that the current owners of the rooms were bona fide purchasers, the court held that the true owner of the building was the municipality, that it had not authorised the sale to the new owners, and therefore that the municipality could recover ownership. An appeal was dismissed by the Regional Court on 12 February 2008.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention, the applicants complained that they had been unlawfully deprived of their property.

Violation of Article 1 of Protocol No. 1

Just satisfaction:

- *Pecuniary damage*: regarding application no. 45173/08, the Court held that the question of the application of Article 41 (just satisfaction) of the Convention, in so far as it concerned the claim for pecuniary damage, was not ready for decision and reserved it for examination at a later date; regarding the 19 other applications, the Court held that Russia should ensure, by appropriate means, the full restoration of the applicants' titles to the rooms in question;

- *Non-pecuniary damage and costs and expenses*: see for details of the sums allocated to the applicants in respect of non-pecuniary damage, as well as costs and expenses, Appendix II to the judgment.

Trapeznikova and Others v. Russia (no. 45115/09)

The applicants, Natalya Borisovna Trapeznikova, Yuliya Sergeyevna Trapeznikova, and Anastasiya Sergeyevna Antonova, are Russian nationals who were born in 1964, 1985, and 2004 respectively, and live in Novosibirsk. The case concerned the death of a member of their family, Sergei Antonov, while serving his prison sentence.

Mr Antonov started serving a three-year prison sentence at a correctional colony in the Novosibirsk region in June 2006. During a medical examination on arriving at the correctional colony,

Mr Antonov stated that he had been under psychiatric supervision since 1996 and that he had been suffering from drug addiction since 2004.

Mr Antonov was found dead in his cell in July 2007 after being placed in solitary confinement for smoking outside the designated area. Prison guards found him hanging by his bed sheets. In the hours preceding his death, he had been examined twice by a prison doctor who provided him with treatment for hypertension.

After examination of his body, the prison doctor noted no injuries apart from the ligature mark on his neck. According to the ensuing autopsy, asphyxiation by hanging was the cause of death. During the autopsy a forensic expert documented several bruises on Mr Antonov's head and face.

The correctional colony conducted an internal inquiry which established that it had not provided Mr Antonov with any psychiatric supervision or treatment, despite the fact that the colony's administration had been aware of his suicidal tendencies.

In July 2007 Ms Trapeznikova asked the prosecuting authorities to institute a criminal investigation into her family member's death, referring to the numerous injuries on his body and challenging the official version of suicide.

To date, however, no fully-fledged criminal investigation has ever been opened. Nine rounds of inquiries were conducted over a period of almost two years, of which all but the last were considered perfunctory. The decisions not to open an investigation were repeatedly quashed and further investigations ordered. Most recently, in February 2009 a senior investigator concluded that Mr Antonov had committed suicide, his injuries having been caused by convulsions. She thus refused to open a criminal investigation into his death.

The senior investigator's decision was subjected to judicial review at two levels in 2009, the courts ultimately upholding her findings on Mr Antonov's death.

Relying in particular on Article 2 (right to life), the applicants blamed the Russian authorities for the death of their family member, alleging that he might have been killed and that this possibility had not been looked into via a thorough and effective criminal investigation.

Violation of Article 2 (investigation)
Violation of Article 2 (right to life)

Just satisfaction: EUR 26,000 euros (EUR) (non-pecuniary damage) and EUR 3,086 (costs and expenses) to the applicants jointly

Just satisfaction

Reisner v. Turkey (no. 46815/09)

The applicant, Michael Reisner, is a German national who was born in 1961 and lives in Schrobenhausen (Germany). The case concerned the transfer and subsequent sale of Demirbank in 2000, Turkey's fifth largest private bank at the time. Mr Reisner was a shareholder of Demirbank.

In December 2000 Demirbank's management and control was transferred to the Savings Deposit Insurance Fund ("the Fund") by a decision of the Banking Regulation and Supervision Board ("the Board"). In that decision the Board held that Demirbank's assets were insufficient to cover its liabilities and that the continuation of its activities would threaten the security and stability of the financial system.

In administrative proceedings brought by the main shareholder of Demirbank (namely, Cıngıllı Holding) against the Banking Regulation and Supervision Agency, the Supreme Administrative Court ordered, in a judgment of November 2004, the annulment of the takeover of the bank by the Fund.

The court held in particular that carrying out the takeover without investigating any further options had been unlawful. The decision was finally upheld in 2006.

While the proceedings were pending, in September 2001 the Fund sold Demirbank to the HSBC bank. Ms Cıngıllıoğlu, one of the main shareholders of Cıngıllı Holding, brought administrative proceedings against the Fund, seeking the annulment of the agreement to sell the bank. The courts found in her favour and annulled the agreement by a 2004 judgment eventually upheld in 2006. Ms Cıngıllıoğlu thus requested the Banking Regulation and Supervision Agency to enforce the court judgments and return Demirbank to its previous owners. In July 2006 the Agency informed her that this would be impossible as, following its sale to HSBC, Demirbank had been struck off the commercial register.

In the course of those events, Mr Reisner brought three unsuccessful sets of proceedings. Following the transfer of Demirbank to the Fund, he first claimed compensation from the Board; and, having received no reply, then brought compensation proceedings against the Agency. That case was dismissed as out of time. Second, following the takeover of the bank by the Fund, he brought proceedings to have that judgment enforced and his rights as a shareholder reinstated. In a decision upheld in 2009, the courts held that enforcement would be impossible as, following its sale to HSBC, Demirbank had been struck off the commercial register. Third, following the annulment of the agreement to sell the bank to HSBC, he again applied to the Fund for compensation. After his request had been rejected, he brought court proceedings against the Fund claiming compensation. That case, too, was dismissed as out of time.

Mr Reisner complained, under Article 1 of Protocol No. 1 (protection of property), that he had been illegally deprived of his shares in Demirbank and that he had been unable to receive any compensation for the loss. He further complained that, as regards the third set of proceedings, he had been denied access to court, as his case had been rejected as out-of-time in breach of Article 6 (right of access to a court).

In its judgment on the merits of 21 July 2015 the Court found a violation of Article 6 § 1 (access to court) in respect of the third set of proceedings and a violation of Article 1 of Protocol No. 1.

Today's judgment concerned the question of just satisfaction (Article 41 of the Convention).

Just satisfaction: EUR 514 (pecuniary damage), and EUR 500 (costs and expenses).

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