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

Press Release
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Judgments and decisions of 16 February 2017

The European Court of Human Rights has today notified in writing 23 judgments[1] and 75 decisions[2]:

five Chamber judgments are summarised below;

18 Committee judgments, concerning issues which have already been submitted to the Court, and the 75 decisions can be consulted on *Hudoc* and do not appear in this press release.

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

D.M. v. Greece (application no. 44559/15)*

The applicant D.M. is a Georgian national who was born in 1976 and is currently serving a sentence in Nigrita prison in Serres. He is disabled and was complaining about the conditions in that prison.

On 24 July 2013 D.M. was sentenced to eight years' imprisonment. On 22 August 2014 he sought the recalculation of the term. An expert's assessment was ordered and it concluded D.M. had a 70% level of disability on account of orthopaedic problems. On 4 June 2015 D.M. was convicted again and sentenced to a term of 17 years and nine months. On 16 June 2015 the prosecutor supervising Nigrita prison decided that one day served would equal two days of the remaining sentence.

D.M. stated that, in addition to his orthopaedic problems, he suffered from an intestinal irritation and pharyngitis. He said that he could not walk, remained standing or carried out day-to-day tasks.

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy) of the European Convention on Human Rights, he complained about the conditions of his detention and about the lack of an effective remedy.

No violation of Article 3
Violation of Article 13 combined with Article 3

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by D.M.

Gavrilov v. Ukraine (no. 11691/06)

The applicant, Vladimir Vasilyevich Gavrilov, was born in 1947. Mr Gavrilov is a retired military officer. The case concerned civil proceedings relating to a dispute about his pension.

Mr Gavrilov instituted proceedings before the Simferopol Garrison Military Court against a local military enlistment office, seeking an order to recalculate his pension. In May 2005 the court found against him. The decision was upheld on appeal by the Navy Court of Appeal on 11 August 2005.

On 30 August 2005 Mr Gavrilov appealed on points of law to the Higher Administrative Court of Ukraine. On 17 October 2005, the court set Mr Gavrilov the time-limit of 1 November 2005 to rectify

[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.

the procedural shortcomings of his appeal. Mr Gavrilov submitted a rectified appeal, which was still dated 30 August 2005. According to the acknowledgment of receipt form, it was received by the court registry on 27 October 2005.

However, the Higher Administrative Court then adopted two decisions refusing to examine the appeal. The first stated that Mr Gavrilov had failed to rectify the appeal within the time-limit set by the court in its decision of 17 October. The second held that the appeal had been lodged outside the statutory time limit for lodging an appeal, and noted that Mr Gavrilov had failed to submit a request for an extension to the time-limit.

Relying on Article 6 § 1 (access to court), Mr Gavrilov complained that he had been arbitrarily denied access to the Higher Administrative Court of Ukraine. He argued that the court had refused to examine his appeal on the grounds that it had been submitted out of time – even though the court had already granted him additional time, and he had duly lodged his amended appeal before the court's deadline.

Violation of Article 6 § 1 (access to court)

Just satisfaction: 1,500 euros (EUR) (non-pecuniary damage) and EUR 13 (costs and expenses)

Andriy Karakutsya and Nadiya Karakutsya v. Ukraine (no. 18986/06)

The applicants, Andriy Karakutsya and Nadiya Karakutsya, husband and wife, are Ukrainian nationals. The case concerned their eviction from their family home.

Whilst Mr Karakutsya was serving in the military, he was allocated a studio in a residence hall of the National Defence Academy of Ukraine. He lived there with his wife and their daughter. In December 2001 Mr Karakutsya resigned from military service, citing family circumstances. The Defence Academy and Office of the Prosecutor General then instituted proceedings to recover possession of the studio, claiming that the family was no longer entitled to accommodation after Mr Karakutsya had left military service. In response, the applicants argued that the State had a special duty to Mr Karakutsya to continue providing him with housing.

In November 2003, the Shevchenkivskyy District Court found in favour of the claimants, holding that the applicants were legally obliged to vacate the property. Mr Karakutsya lodged an appeal. The first instance judgment was upheld by the Court of Appeal in January 2004, after a hearing held in Mr Karakutsya's absence. According to the applicants, they were evicted from the studio three months later.

In 2005 Mr Karakutsya submitted written complaints to the President of the Court of Appeal, asking why the hearing of his appeal was being delayed. He was informed that the appeal had already taken place, and that the court had upheld the judgment which had been made at first instance. The applicants then lodged an appeal with the Supreme Court of Ukraine for leave to appeal in cassation out of time, claiming that the Court of Appeal had failed to notify them of the date and time of their appeal, or of the court's judgment. In December 2005 the Supreme Court rejected the request, on the grounds that leave to appeal could only be granted within one year of the pronouncement of the decision being appealed.

Relying notably in substance on Article 6 § 1 (access to court), the applicants complained that they had been arbitrarily denied access to the Supreme Court. In particular, they alleged that the Court of Appeal's failure to notify them of the hearing of their case, or its judgment on it, had prevented them from making a cassation appeal within the time limit applied by the Supreme Court.

No violation of Article 6 § 1

Artur Parkhomenko v. Ukraine (no. 40464/05)

The applicant, Artur Parkhomenko, is a Ukrainian national who was born in 1971 and lives in Zaporizhzhya (Ukraine). The case concerned criminal proceedings brought against him for armed robbery.

Mr Parkhomenko was arrested and placed in pre-trial detention on 15 June 2001 on suspicion of having attempted to rob a couple in their apartment at gunpoint. He was questioned on 16 and 18 June, and on both occasions admitted that he had attacked the couple at the instigation of La., a former inmate with whom he had served a prison sentence between 1993 and 1999. La. had provided him with the pistol and waited nearby while he had carried out the attack, driving him home and reclaiming the gun afterwards. Before making both of those statements, Mr Parkhomenko had been informed of his right to legal counsel and his right to remain silent but signed written waivers of those rights. However, after confrontations with La. and another former cellmate also allegedly involved in the attack on the couple, Mr Parkhomenko stated that he had acted alone. He also refused to have any further confrontations with his former cellmates. On 9 October 2001 Mr Parkhomenko asked the authorities to assign him a lawyer. However, he was questioned without a lawyer being present, and changed his statement again, alleging that he had indeed committed the attack with the help of his former prison inmates but had felt obliged to say he had committed the attack alone out of fear of reprisals.

The case was subsequently submitted for trial to the Kyiv Court of Appeal. In July 2002 Mr Parkhomenko complained to that court that the police had tortured him during his initial questioning (in June 2001) in order to make him incriminate his former cellmate, La.. He repeated this allegation when questioned in court and stated that he had acted alone when carrying out the attack.

Mr Parkhomenko was convicted in December 2004 and sentenced to seven years' imprisonment for having attacked the couple in conspiracy with two of his former prison cellmates. In reaching that conclusion, the court relied on his various statements made in the course of the pre-trial investigation, the statements made by the investigator who had questioned him on 9 October 2001 confirming that Mr Parkhomenko had lied during the confrontations with his former cellmates because he had been threatened and the fact that the bullet found at the crime scene had been shot from the gun later found in La.'s apartment. It found that Mr Parkhomenko's submissions regarding police pressure were unsubstantiated. The Supreme Court upheld this first-instance judgment in May 2005.

Mr Parkhomenko was released on parole in May 2007.

Relying notably on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), he alleged that the criminal proceedings against him had been unfair, submitting in particular that he had been convicted of robbery in conspiracy with others only on the basis of confessions obtained in the absence of a lawyer. He also complained under Article 34 (right of individual petition) that the authorities had refused to provide him with a copy of his request for a lawyer of 9 October 2001 which was necessary for the proceedings he had brought before the European Court of Human Rights.

No violation of Article 6 §§ 1 and 3 (c)
Violation of Article 34

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Parkhomenko.

Kryvenkyy v. Ukraine (no. 43768/07)

The applicant, Volodymyr Kryvenkyy, is a Ukrainian national who was born in 1934 and lives in Velyki Gadomtsi (Ukraine). The case concerned his complaint about losing his title to a plot of farmland.

In 1997 Mr Kryvenkyy was allocated some farmland in-kind as a share in a plot of land co-owned by members of a collective farm. Subsequently, in June 2003 he was officially issued with an individual land-ownership certificate for the land. However, he had to stop farming the land in August 2006 when his title to the land was annulled by the civil courts. This was because of a mistake that had occurred in attributing the land; namely, in a decision made by Parliament, a portion of Mr Kryvenkyy's land had already been expropriated and attributed in 1999 to a company for the exploitation of kaolin deposits. Mr Kryvenkyy's request for leave to appeal in cassation, arguing that he had obtained the land lawfully and in good faith, was rejected by the Supreme Court of Ukraine in April 2007.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), Mr Kryvenkyy complained that he had been deprived of his farmland, without compensation or the courts making any effort to strike a fair balance between the competing interests at stake.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 10,000 (pecuniary and non-pecuniary damage)

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