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

Press Release
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Judgments and decisions of 20 December 2016

The European Court of Human Rights has today notified in writing 18 judgments[1] and 37 decisions[2]:

eight Chamber judgments are summarised below; for two others, in the cases of *Uspaskich v. Lithuania* (application no. 14737/08) and *Shioshvili and Others v. Russia* (no. 19356/07), separate press releases have been issued;

eight Committee judgments, which concern issues which have already been submitted to the Court, and the 37 decisions can be consulted on *Hudoc* and do not appear in this press release.

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

Ljaskaj v. Croatia (application no. 58630/11)

The applicant, Prek Ljaskaj, is a Croatian national who was born in 1942 and lives in Kutina (Croatia). The case concerned his claim that his property had been sold in enforcement proceedings for a fraction of its true value.

In 1989 Mr Ljaskaj concluded a contract of sale, by which he purchased a house in Kutina from three sellers. Though the price of the property had been recorded as 47,000 German marks, Mr Ljaskaj paid only 30,000. The sellers sued him for the difference. In 1994 the Kutina Municipal Court awarded a judgment in the sellers' favour.

Over 12 years later, in 2003, the sellers applied to have the judgment enforced. They claimed the judgment debt, plus the statutory interest generated on that sum since 1989, and costs. In March 2003, the Municipal Court issued a writ of execution to enforce the judgment, applicable to Mr Ljaskaj's immoveable property. In particular, the writ applied to Mr Ljaskaj's house.

The house was valued by a court-appointed expert at HRK 384,197. However, after two failed attempts to sell it at public auction, the restriction on the minimum sale price was removed. The property was eventually sold for only HRK 70,000. The sale was upheld in a decision of the Municipal Court in June 2009. Mr Ljaskaj appealed the decision, but the appeal was dismissed by the Sisak County Court. He then lodged a constitutional complaint, alleging violations of his right to equality before the law and his right of ownership. However, the Constitutional Court declared the application inadmissible, on the grounds that the contested decision was not open to constitutional review. The final decision was served on 6 June 2011.

Earlier that year, the Municipal Court had distributed the sale proceeds to Mr Ljaskaj's creditors, and ordered his eviction from the property.

Relying in substance on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Mr Ljaskaj complained that his house had been sold in the enforcement proceedings for less than one-fifth of its value. He maintained that this was contrary 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.

the Enforcement Act and the consistent case-law of the domestic courts, which had prohibited the sale of immoveable property in enforcement proceedings for such low amounts.

Violation of Article 1 of Protocol No. 1

Just satisfaction: 7,870 euros (EUR) (pecuniary damage)

Sagvolden v. Norway (no. 21682/11)

The applicant, Torill Sagvolden, was a Norwegian national who was born in 1929 and died in 2015. The case concerned the enforced sale of her apartment.

In 2004 Ms Sagvolden obtained an apartment in a housing co-operative. Prior to acquiring the property, she entered into a written agreement, whereby she had stated that she would live in the apartment alone, not with her son. However, at some time thereafter her son moved in with her. On repeated occasions, he was involved in quarrels and violent episodes with certain neighbours. In 2006 and 2008 he was convicted for several instances of violence and disturbing behaviour, most of which were committed against his neighbours between 2005 and 2008. A restraining order was imposed on him with respect to four neighbours, the last one expiring in April 2009.

Later that year, the board of the housing co-operative initiated proceedings against Ms Sagvolden, in order to enforce a sale of the apartment. The Oslo City Court upheld the claim that Ms Sagvolden had substantially defaulted on her obligations, and granted the enforced sale. The court decided the case without an oral hearing, on the ground that Ms Sagvolden's objections were manifestly ill-founded. Ms Sagvolden appealed the judgment, but her appeals were rejected by both the Borgarting High Court and the Supreme Court. Ms Sagvolden and/or her son lodged numerous other proceedings relating to the sale of the apartment, but all of these were unsuccessful.

Ms Sagvolden died in November 2015. Her heirs sought to pursue the application.

Relying on Article 6 § 1 (right to a fair hearing), Ms Sagvolden complained that the decision not to hold an oral hearing in her case had been unjustified. Furthermore, referring to the omission to hold a hearing, she complained that the order compelling her to sell her apartment had amounted to an unjustified interference with her rights under Article 8 (right to respect for private and family life and the home).

No violation of Article 6 § 1
No violation of Article 8

Two cases concerning the expulsion of Georgian nationals from Russia in autumn 2006

Two cases concerned the collective expulsion of Georgians from Russia, an issue previously addressed by the Court in the inter-State case *Georgia v. Russia (I)* [GC] (no. 13255/07) of 3 July 2014.

The background is as follows. During the period from the end of September 2006 to the end of January 2007, identity checks of Georgian nationals residing in Russia were carried out. Many were subsequently arrested and taken to police stations. After a period of custody, they were grouped together and taken by bus to a court, which summarily imposed administrative penalties on them and gave decisions ordering their administrative expulsion from Russian territory. Subsequently, some were taken to detention centres for foreigners where they were detained for varying periods of time, then taken by bus to various airports, and expelled to Georgia by aeroplane. Others left Russian territory by their own means.

Berdzenishvili and Others v. Russia (nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07)

The applicants are 19 Georgian nationals who were born between 1948 and 1991 and live in Kareli, Bagdady, Tbilisi, Rustavi, Zugdidi, and Telavi (Georgia). One application was continued by the son of an original applicant, who had died before the Court considered his case.

The applicants claimed that they had been among the Georgians who were arrested and expelled from Russia in the autumn of 2006. They made the following complaints in particular.

18 of the applicants relied in particular on Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to complain that they were expelled collectively. These applicants also relied on Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) to complain that the Russian government had infringed the procedural guarantees that should be applied in cases of deportation. All of the applicants relied on Article 5 §§ 1 and 4 (right to liberty and security / right to have lawfulness of detention decided speedily by a court), to complain that they had been arbitrarily detained, and had had no opportunity to challenge the legality of their detention. They also relied on Article 3 (prohibition of inhuman or degrading treatment) to complain that the conditions of their detention had been inhuman and degrading, including allegations that the cells had been severely overcrowded and insanitary. Relying on Article 13 (right to an effective remedy) taken in conjunction with various other articles, the applicants complained that they had had no effective remedy to challenge their unlawful arrests, detention and expulsion. Furthermore, the applicants relied on Article 14 (prohibition of discrimination) taken in conjunction with various articles, to complain that the actions of the Russian authorities had been taken because of their nationality or ethnicity, and had not been based on infractions of the Russian immigration rules.

Violation of Article 4 of Protocol No. 4 – in respect of Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Chkaidze, Mr Jaoshvili, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili
No violation of Article 4 of Protocol No. 4 – in respect of Ms Shavshishvili, Mr Artur Sarkisian and Mr Andrei Sarkisian
No violation of Article 1 of Protocol No. 7
Violation of Article 5 §§ 1 and 4 – in respect of Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili
No violation of Article 5 §§ 1 and 4 – in respect of Ms Chkaidze, Mr Jaoshvili, Ms Shavshishvili, Mr Artur Sarkisian and Mr Andrei Sarkisian
Violation of Article 3 (inhuman and degrading treatment) – in respect of Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili, regarding their conditions of detention
No violation of Article 3 – in respect of Ms Chkaidze, Mr Jaoshvili, Ms Shavshishvili, Mr Artur Sarkisian and Mr Andrei Sarkisian
Violation of Article 13 taken in conjunction with Article 3 – in respect of Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili
No violation of Article 13 taken in conjunction with Article 3 – in respect of Ms Chkaidze, Mr Jaoshvili, Ms Shavshishvili, Mr Artur Sarkisian and Mr Andrei Sarkisian
No violation of Article 13 taken in conjunction with Article 1 of Protocol No. 7
No violation of Article 14 taken in conjunction with Article 6 and Article 1 of Protocol No. 7
The Court also decided to **strike out** of its list application no. 16369/07 insofar as it concerned Mr Gocha Khmaladze.

Just satisfaction: The Court held that the question of the application of Article 41 (just satisfaction) of the Convention, as far as the award of damages was concerned, was not ready for decision and reserved it for decision at a later date. It further awarded the applicants of application no. 16369/07, jointly, 3,037.65 sterling pounds (GBP) in respect of costs and expenses.

Dzidzava v. Russia (no. 16363/07)

The applicant, Nino Dzidzava, is a Georgian national who was born in 1959 in Senaki (Georgia). The case concerned the death of her husband, Tengiz Togonidze, whilst he was being deported.

At the time of the expulsions, Mr Togonidze was living in St Petersburg without a valid visa. He was arrested and detained in October 2006. A court ordered that he be held in a special detention centre, before being expelled from the country. Despite notifying the authorities that he suffered from asthma attacks, Mr Togonidze was detained in overcrowded and insanitary conditions. The Consul of Georgia in Russia at the time visited the detention centre. He observed that Mr Togonidze was having difficulties breathing, and that his face had turned black. The consul requested that Mr Togonidze be transferred to a hospital, but no transfer was made.

Two weeks after he was first arrested, Mr Togonidze was transported with 24 other Georgian nationals by bus to Domodedovo airport, in order to be deported. However, the bus had been unventilated, and Mr Togonidze's health deteriorated during the journey. After leaving the bus and taking a few steps on his way to the terminal, he collapsed and died.

Relying in particular on Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment), Ms Dzidzava complained that the Russian authorities had held her husband in degrading conditions and provided him with insufficient medical care. This had allegedly led to his death, which Ms Dzidzava claimed had never been properly investigated by the Russian authorities.

Violation of Article 2 (right to life)
Violation of Article 2 (investigation)
Violation of Article 3 (inhuman and degrading treatment)
Violation of Article 13 in conjunction with Article 3

Just satisfaction: EUR 40,000 (non-pecuniary damage) and GBP 1,944.78 (costs and expenses)

Radzhab Magomedov v. Russia (no. 20933/08)

The applicant, Radzhab Gasayniyevich Magomedov, is a Russian national who was born in 1968 and is serving a prison sentence in Samara (Russia). The case concerned his prosecution for car theft.

In December 2004, Mr Magomedov was suspected of being involved in a series of car thefts. According to the government, the police applied for a judicial authorisation to tap his phone, which was provided by the Samara Regional Court. Mr Magomedov was arrested and charged later that month. He was then kept in pre-trial detention until his trial in the Samara Regional Court in March 2007. The court found Mr Magomedov guilty of 11 car thefts and sentenced him to 12 years' imprisonment. The conviction was upheld on appeal by the Supreme Court of the Russian Federation.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Magomedov complained that, during and after his arrest, he had been beaten by police officers. He also complained of the conditions during his detention (including allegations of overcrowding, bedbugs, and extreme temperatures); and the conditions of his transport between prison and court (in particular, that he had been given an insufficient chance to rest and barely any food; and that the conditions in the transport van made it difficult to breathe, with stiflingly hot temperatures in summer). Further relying on Article 8 (right to respect for private and family life, the home and the

correspondence), he complained that, though his intercepted communications had been relied upon as evidence against him in trial, the court order authorising the interception had never been disclosed to him.

No violation of Article 3 – concerning the conditions of detention
Violation of Article 3 (inhuman an degrading treatment) – concerning the conditions of transport
Violation of Article 8

Just satisfaction: EUR 6,500 (non-pecuniary damage) and EUR 500 (costs and expenses)

Yusupova v. Russia (no. 66157/14)

The applicant, Petimat Yusupova, is a Russian national who was born in 1973 and lives in Grozny (the Chechen Republic, Russia). The case concerned the failure of the domestic authorities to enforce a court judgment that would grant Ms Yusupova a residence order in respect of her child.

Ms Yusupova had a child in June 2007. At the time she lived together with the father, A.A., but the couple separated three months later. The child continued to live with Ms Yusupova. However, in August 2011 the applicant's brother-in-law took the child to see A.A. who was visiting from Moscow. The child was never returned. A.A. took the boy to Moscow, and Ms Yusupova had not seen him since.

Ms Yusupova applied to the domestic courts, seeking to determine the child's place of residence as being with her. The Oktyabrskiy District Court of Grozny made an order deciding that the child should live with Ms Yusupova, which was upheld on appeal. The District Court issued a writ of execution in August 2013.

Since that time, the enforcement file has been passed between a number of different domestic authorities. However, to date none of those authorities know the whereabouts of A.A. or Ms Yusupova's child, and the District Court's order remains unenforced.

Relying on Article 8 (right to respect for private and family life), Ms Yusupova complained that the authorities had failed to enforce the judgment granting her a residence order in respect of her son.

Violation of Article 8

Just satisfaction: EUR 12,500 (non-pecuniary damage) and EUR 2,250 (costs and expenses)

Just Satisfaction

Sociedad Anónima del Ucieza v. Spain (no. 38963/08)*

The applicant company, Sociedad Anónima del Ucieza, is a limited company founded in 1978 under Spanish law, based in Ribas de Campos (Palencia).

The case concerned the company's ownership claim over religious buildings on a plot of land which had formerly belonged to the Catholic Church and which the company purchased at a public auction.

In July 1978 the company purchased land at Ribas de Campos. The entry in the land register mentioned that a church, a house, a number of norias, a poultry yard and a mill formed an enclave within the plot of land. The land had belonged to the former Premonstratensian monastery of Santa Cruz de la Zarza, which had been part of the Santa Cruz Priory, founded in the 12th century.

In December 1994, the Diocese of Palencia entered in the land register, in its own name, a plot of land comprising a Cistercian-style church, a sacristy and a capitular chamber which had once formed part of the old Premonstratensian monastery of Santa Cruz, and which were located on the land owned, according to the land register, by the applicant company. Even though its name appeared in the register as the owner of the land in question, the applicant company was neither informed of

nor asked about this new entry in the register. Having been informed after the event, it submitted complaints to the Diocese, which replied that the property in question had always belonged *de facto* to the Diocese of Palencia under the Law on the dismantling of church property of 2 September 1841, which excluded churches and cathedrals and their annexes from the dismantling process. The applicant company brought an action against the Diocese of Palencia to declare void the entry made in the land register by the Diocese in 1994 concerning the church and its annexes. The company's action was dismissed, as was its subsequent appeal. On 14 June 2005 the Supreme Court declared inadmissible an appeal on points of law by the company. The company then lodged an *amparo* appeal with the Constitutional Court, which on 26 February 2008 declared the appeal inadmissible as lacking any constitutional basis.

Relying on Article 6 § 1 (right to a fair hearing), the applicant company submitted that it had been deprived on unduly formalistic grounds of its right of access to an appeal on points of law before the Supreme Court. Relying on Article 1 of Protocol No. 1 (protection of property), it complained that it had been deprived of part of its property in the absence of any public interest and without any compensation on the basis of a law predating the Constitution.

In the judgment on the merits delivered on 4 November 2014 the Court held, unanimously, that there had been a violation of Article 6 § 1 (right to a fair hearing) of the Convention and, by a majority, that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention.

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

Just satisfaction: EUR 600,000 (pecuniary damage), and EUR 15,600 (non-pecuniary damage)

Lindstrand Partners Advokatbyrå AB v. Sweden (no. 18700/09)

The applicant, Lindstrand Partners Advokatbyrå AB, is a Swedish law firm. The case concerned a search undertaken on its premises by the Tax Agency in the course of audits which were being carried out on two other companies.

The Tax Agency suspected that significant amounts of money had been shielded from Swedish taxation through irregular transactions between a client company of Lindstrand Partners, SNS-LAN Trading AB, and a Swiss company.

On 4 March 2008, the Tax Agency applied to the County Administrative Court to take coercive measures in respect of SNS-LAN, in particular the search and seizure of certain documents and other material which might shed light on the ownership of the Swiss company, and its dealings with SNS-LAN. As SNS-LAN had recently been liquidated and had no business premises of its own, the Tax Agency requested that the search be conducted at two other addresses linked to an individual who had been controlling the company, Mr Jurik. One of the addresses was the offices of Lindstrand Partners, selected on the basis that Mr Jurik was an associate there. The application to search the premises was approved on 10 March 2008.

The search, which had been extended to cover the parent company of SNS-LAN, Draupner Universal AB, was conducted four days later by officials from the Enforcement Authority Agency in Stockholm and several auditors from the Tax Agency. Cupboards, shelves, and computers in the offices were searched, and a safe was opened. No material of relevance was found at the offices, but the officials did seize and search material at a flat linked to Mr Jurik. This included data drives, which Lindstrand Partners claimed belonged to them.

Lindstrand Partners and SNS appealed against the County Administrative Court judgment of 10 March 2008. On 7 April 2008, the Administrative Court of Appeal in Stockholm dismissed Lindstrand Partners' appeal stating that, while the appealed judgment did allow the use of coercive

measures on the firm's premises, the firm itself had not been the subject of the measures; the search was carried out as it was assumed that documents relevant to the audit of SNS would be found there. The appellate court therefore concluded that Lindstrand Partners was not affected by the judgment in such a way that it was entitled to appeal against it. On 19 June, the Supreme Administrative Court refused Lindstrand Partners leave to appeal.

Furthermore, proceedings were initiated with a view to have certain seized material exempted from the Tax Agency's audit. The request of Lindstrand Partners was again dismissed for lack of legal standing, the final decision being taken by the Supreme Administrative Court on 28 January 2009. The request of Draupner was examined on the merits, however, leading to some documents being exempted as they were deemed to be of a private nature. These proceedings became final on 8 May 2012 through the Supreme Administrative Court's decision to refuse leave to appeal.

Relying on Article 8 (right to respect for private and family life), Lindstrand Partners complained that the firm's privacy rights had been infringed by the fact that the Tax Agency had been given access to search its premises and to seize data drives allegedly belonging to the firm. Relying on Article 13 (right to an effective remedy) in conjunction with Article 8, Lindstrand Partners further complained that they had been denied standing in the administrative appeal proceedings, and that a request made by them for certain documents to be exempted from the audit had been refused.

No violation of Article 8
Violation of Article 13 taken in conjunction with Article 8

Just satisfaction: The applicant firm did not submit a claim for pecuniary or non-pecuniary damage. The Court awarded them EUR 5,000 in respect of costs and expenses.

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