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

Press Release
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Judgments and decisions of 21 July 2016

The European Court of Human Rights has today notified in writing 24 judgments[1] and 92 decisions[2]:

six Chamber judgments are summarised below; for two others, in the cases of *Kulinski and Sabev v. Bulgaria* (application no. 63849/09) and *Mamatas and Others v. Greece* (nos. 63066/14, 64297/14 and 66106/14), separate press releases have been issued;

for one decision, in the case of *Bulgarian Helsinki Committee v. Bulgaria* (nos. 35653/12 and 66172/12), a separate press release has also been issued;

16 Committee judgments, which concern issues which have already been submitted to the Court, and the remaining 91 decisions can be consulted on *Hudoc* and do not appear in this press release.

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

Just Satisfaction

Dimitrovi v. Bulgaria (application no. 12655/09)

The applicants, Angelina Dimitrova and Konstantin Dimitrov, mother and son, are Bulgarian nationals who were born in 1973 and 2004 respectively and live in Sofia. Their case concerned the seizure of some of their assets by the state.

Angelina Dimitrova and Konstantin Dimitrov are the widow and the son of Konstantin Dimitrov who died in 2003. In 2001 the Sofia regional public prosecutor opened a first set of proceedings against Ms Dimitrova and her husband under Chapter 3 of the Citizen's Property Act. Chapter 3 of this Act covered the "forfeiture of unlawful or non-work related income received by citizens". Although most of the Act was repealed in 1990, Chapter 3 remained in force until 2005. The investigation examined the couple's income between 1990 and 2001, but in 2002 the prosecutor decided to discontinue proceedings. At a later date the Sofia regional public prosecutor decided to open new proceedings, once more looking at their income over the same period. In 2004 the prosecutor brought a case against Ms Dimitrova and her son under Chapter 3 of the Citizen's Property Act, demanding the forfeiture of two flats, an office, some land, a holiday house and a car. Following an appeal, the State seized the flats, the office and the land in 2010 and obliged Ms Dimitrova and her son to pay the State the equivalent value of the holiday house and the car which had been transferred to other people during the course of the proceedings.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Ms Dimitrova and her son argued that the forfeiture of their properties had been unfair, alleging that the relevant law was flawed both in principle and in the way it had been applied in their case. Notably, the law provided for no time limits, meaning that the forfeiture proceedings could be opened, closed and reopened at any point, and placed a disproportionate burden on the defendants, there being no reliable method of calculating income

[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.

and expenditure over a lengthy period of time which, in their case, had been marked by economic transition and galloping inflation. They also argued that the law served no particular purpose as cases related to tax evasion or criminal behaviour were specifically excluded; indeed, the applicants alleged that they had never been charged with, prosecuted for or convicted of a criminal offence.

In its principal judgment of 3 March 2015 the Court found a violation of Article 1 of Protocol No. 1.

Today's judgment concerned the question of the application of Article 41 (just satisfaction) of the Convention as far as pecuniary damage was concerned.

Just satisfaction: 429,310 euros (EUR) in respect of pecuniary damage and EUR 500 in respect of costs and expenses to the applicants jointly

Miryana Petrova v. Bulgaria (no. 57148/08)

The applicant, Miryana Petrova, is a Bulgarian national who was born in 1950 and lives in Sofia. The case concerned her complaint of being unable to challenge before the courts her dismissal from the National Security Service.

Ms Petrova had been employed by the Security Service as a system operator since 1981. In 2002 the Classified Information Protection Act entered into force, requiring heads of organisational units to request new security clearance for staff who needed access to classified information. In compliance with that obligation, in 2003, the Director of the National Security Service issued a decision refusing Ms Petrova security clearance allowing access to classified information. The decision did not contain any reasoning apart from referring to the relevant section of the 2002 Act. On appeal, the State Commission for Information Security upheld the refusal. In April 2004 the Director of the National Security Service ordered Ms Petrova's dismissal on the grounds that security clearance was an indispensable condition of her being able to perform her duties. Ms Petrova challenged her dismissal before the court, but the Sofia District Court rejected her claims on the ground that the refusal to grant her security clearance was a final and valid administrative act which was not open to judicial review. That court's decision was eventually upheld by the Supreme Court of Cassation in June 2008.

Relying in particular on Article 6 § 1 (right to a fair hearing and access to court), Ms Petrova complained that she had been unable to challenge the refusal to grant her security clearance on the basis of which her employment contract had been terminated.

Violation of Article 6 § 1

Just satisfaction: EUR 2,400 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

Shahanov and Palfreeman v. Bulgaria (nos. 35365/12 and 69125/12)

The applicants, Nikolay Shahanov, a Bulgarian national, and Jock Palfreeman, an Australian national, were born in 1977 and 1986 respectively. Mr Shahanov is serving a life sentence in Plovdiv Prison and Mr Palfreeman is serving a sentence of 20 years' imprisonment in Sofia Prison (both in Bulgaria). The case concerned their disciplinary punishments for complaining to the prison authorities about prison officers.

In October 2011 Mr Shahanov made two written complaints to the Minister of Justice, accusing two prison officers of favouritism towards a prisoner because they were related. In May 2012 Mr Palfreeman wrote to the governor of Sofia Prison, alleging that – unnamed – prison officers had been rude to two journalists who had visited him in prison and had stolen other visitors' personal effects left in lockers during their visit to the prison.

Both men were subsequently found guilty of disciplinary offences for making defamatory statements and false allegations about prison officers. Mr Shahanov was placed in solitary confinement for ten

days and Mr Palfreeman was deprived for three months of receiving food parcels. Their legal challenges against these disciplinary punishments were dismissed (in December 2011 and August 2012, respectively), the competent authority finding that the orders against them were lawful and that the sanction corresponded to the seriousness of their offences.

Relying in particular on Article 10 (freedom of expression), both applicants alleged that their disciplinary punishments had breached their right to express criticism of prison officers and had been imposed as a reprisal.

Violation of Article 10 – in respect of both applicants

Just satisfaction: EUR 5,500 to Mr Shahanov and EUR 3,500 to Mr Palfreeman in respect of non-pecuniary damage and EUR 1,500 to Mr Shahanov in respect of costs and expenses

Tomov and Nikolova v. Bulgaria (no. 50506/09)

The applicants, Alexander Tomov and Mariana Nikolova, are Bulgarian nationals who were born in 1950 and 1957 respectively and live in Sofia.

The case concerned a complaint about unfair deprivation of agricultural land as a result of legislation on the restitution of previously nationalised property.

Mr Tomov and Ms Nikolova had bought the land, a plot of 1,000 square metres in the village of Kranevo on the Black Sea coast, in 1993 from a private seller. The seller had acquired the property in 1967 from an agricultural co-operative. Mr Tomov and Ms Nikolova remained in possession of the land until 2003 when they discovered that the plot had been collectivised after 1945 and that the heirs of the man who had owned the land before it was collectivised had instituted proceedings for restitution of the plot in 1991. Ultimately, in December 2008 the Bulgarian Supreme Court of Cassation granted the restitution request based on the Agricultural Land Act of 1991, returning the land to the heirs of the pre-collectivisation owner.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained about the restitution of the plot to the heirs of the pre-collectivisation owners, alleging that they had bought the land in good faith and had had no way of knowing that the property was the subject of a restitution claim.

Violation of Article 1 of Protocol No. 1

Just satisfaction:, EUR 29,000 jointly to Mr Tomov and Ms Nikolova in respect of pecuniary damage, EUR 1,000 each to Mr Tomov and Ms Nikolova in respect of non-pecuniary damage, and EUR 2,800 jointly to Mr Tomov and Ms Nikolova in respect of costs and expenses

Foulon and Bouvet v. France (nos. 9063/14 and 10410/14)*

The applicants in the first case are Mr Didier Foulon, who was born in 1971 and is a French national, and Ms Emilie Sanja Lauriane Foulon, who was born in Bombay, India, on 31 July 2009 and is Mr Foulon's daughter. The applicants in the second case are Mr Philippe Bouvet, who was born in 1965 and is a French national, and Adrien and Romain Bouvet, who were born in Bombay, India, on 26 April 2010.

In both cases the applicants have been unable to obtain recognition under French law of their biological affiliation as established in India. The French authorities, suspecting recourse to unlawful gestational surrogacy agreements ("*GPA*"), are refusing to transcribe the birth certificates, which were issued in India.

Further to the request submitted by Mr Foulon, Ms Foulon's biological father, to transcribe the birth certificate issued in India to the French registers and following the refusal by the Nantes Public

Prosecutor to grant that request on account of the suspicion of recourse to a *GPA*, which is prohibited under Article 16-7 of the Civil Code, Mr Foulon and Ms Foulon's mother applied to the Nantes Regional Court to obtain the transcription of the birth certificate to the civil status registers. On 10 June 2010 the Nantes Regional Court ("*TGI*") granted that application. The Public Prosecutor's Office applied, successfully, to the Rennes Court of Appeal to set aside the *TGI*'s judgment. Mr Foulon and Ms Foulon's mother lodged an appeal on points of law, which was dismissed by the Court of Cassation.

The third applicant, Mr Philippe Bouvet, the father of Adrien and Romain Bouvet, applied to the Consulate General of France in Bombay for the transcription of his sons' birth certificates to the French civil status registers. The Nantes Public Prosecutor, suspecting that the biological father had had recourse to a *GPA*, also refused to enter the twins' birth certificates in the French registers, and instructed the French consular authorities in India to suspend the transcription of the children's birth certificates. Mr Bouvet applied, successfully, to the Nantes *TGI* for the registration of the Bouvet twins' birth certificates. The Rennes Court of Appeal upheld the *TGI*'s judgment, noting that the certificates met the requirements of Article 47 of the Civil Code, and that there were no grounds for advancing or prioritising such public-order considerations as the best interests of the child or the inalienability of the human body. The Public Prosecutor with the Rennes Court of Appeal appealed on points of law.

On 13 September 2013 the French Court of Cassation delivered the two separate judgments providing reasons for the refusal to transcribe the civil-status documents of the Foulon and Bouvet children, the main reason being the *fraude à la loi* (evasion of the law) involving the conclusion of a *GPA* agreement, which is contrary to French law.

Relying on Article 8 (right to respect for private and family life), the applicants alleged a breach of their right to respect for their private and family life as a result of the refusal to transcribe the Indian birth certificates of Ms Foulon and of Adrien and Romain Bouvet into the French civil-status registers on the grounds that Mr Didier Foulon and Mr Philippe Bouvet had had recourse to a surrogacy agreement.

No violation of Article 8 – as concerns the applicants' right to respect for their family life
Violation of Article 8 – as concerns the right to respect for private life of Emilie Sanja Lauriane Foulon and Adrien and Romain Bouvet

Just satisfaction: EUR 5,000 each to Emilie Sanja Lauriane Foulon and Adrien and Romain Bouvet in respect of non-pecuniary damage, and EUR 15,000 jointly to Didier and Emilie Sanja Lauriane Foulon and EUR 15,000 jointly to Philippe, Adrien and Romain Bouvet in respect of costs and expenses

Petreska v. "the former Yugoslav Republic of Macedonia" (no. 16912/08)

The applicant, Desanka Petreska, is a Macedonian national who was born in 1953 and lives in Skopje. The case concerned her dismissal as an employee of the State Intelligence Agency.

Ms Petreska was made redundant on 28 February 2001. She challenged her dismissal in April 2001. The first-instance court dismissed her claim, finding that she had been dismissed on the basis of internal regulations of 27 February 2001 providing for reduced number of employees for posts such as held by Ms Petreska. She appealed, arguing that the regulations could not apply in her case as they had not yet entered in force. This appeal was dismissed as was her subsequent appeal on points of law before the Supreme Court, in a final judgment of January 2008.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), Ms Petreska complained in particular about the excessive length of the proceedings in her case.

Violation of Article 6 § 1 (length of proceedings)

Just satisfaction: EUR 1,200 (non-pecuniary damage) and EUR 800 (costs and expenses)

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