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

Press Release
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Judgments and decisions of 25 February 2016

The European Court of Human Rights has today notified in writing seven judgments[1] and 28 decisions[2]:

six Chamber judgments are listed below; for one other, in the case of *Société de Conception de Presse et d'Édition v. France (application no. 4683/11)*, a separate press release has been issued;

the 28 decisions, can be consulted on *Hudoc* and do not appear in this press release.

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

Domazyan v. Armenia (application no. 22558/07)

The applicant, Tamara Domazyan, is an Armenian national who was born in 1954 and lives in St Petersburg (Russia). The case concerned her complaint of having been deprived of access to court due to the Armenian courts' refusal to admit her counter-claim in civil proceedings against her.

Ms Domazyan had received an ownership certificate in respect of a garage and a small storage building in Yerevan, based on a decision by the Mayor of Yerevan of July 2005 by which he had recognised her ownership of those buildings. In June 2006 the Mayor adopted another decision, which annulled the decision recognising her ownership.

Subsequently the Mayor lodged a claim against Ms Domazyan with a district court seeking to invalidate her ownership certificate and a lease agreement concluded between her and the Mayor in respect of the plot of land where the buildings were situated. Ms Domazyan issued a power of attorney authorising a lawyer to represent her in court, who then lodged a counter-claim on her behalf seeking to invalidate the Mayor's decision of June 2006 as taken in violation of the domestic law. The district court decided, on 1 November 2006, not to admit the counter-claim, finding that the power of attorney had not been issued in accordance with the relevant provisions of the Code of Civil Procedure. In a judgment of the same day the court granted the Mayor's claim. An appeal lodged by Ms Domazyan's lawyer against the decision not to admit the counter-claim was declared inadmissible. His appeal against the judgment granting the mayor's claim was left unexamined by the appeal court, which stated that the appeal had not been lodged within the applicable time-limit. At the same time the court rejected the lawyer's request – who alleged that Ms Domazyan had received a copy of the judgment belatedly – to restore the missed time-limit for lodging an appeal. The court found that his allegation had not been substantiated. An appeal on points of law was eventually rejected by the Court of Cassation in February 2007.

Relying on Article 6 § 1 (access to court) Ms Domazyan complained that her right of access to court had been violated as a result of the district court's refusal to examine her counter-claim.

Violation of Article 6 § 1

Just satisfaction: 3,600 euros (EUR) (non-pecuniary damage)

[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.

Klinkenbuß v. Germany (no. 53157/11)

The applicant, Andreas Klinkenbuß, is a German national who was born in 1964 and is currently detained in a psychiatric hospital in Lippstadt (Germany). The case concerned his complaint of his continued detention in a psychiatric hospital.

Mr Klinkenbuß had been suspected of having sexually assaulted several girls already as a minor, before the age of criminal responsibility. In January 1983 he was convicted of attempted rape, together with, in particular, sexual assault, and of attempted murder. He was sentenced to five years' imprisonment. At the same time, the trial court ordered his detention in a psychiatric hospital under Article 63 of the Criminal Code, finding that he had acted with diminished criminal responsibility. The court considered that he suffered from a consciousness disorder and sadistic sexual tendencies, caused by infantile brain damage and a violent upbringing. He could be expected to commit further unlawful acts and was therefore dangerous to the general public. Mr Klinkenbuß has been detained in a psychiatric hospital ever since. During a leave from detention in 1990, he attacked a woman, threatened her with a knife and tried to force her into a forest.

The courts dealing with the execution of sentences have reviewed Mr Klinkenbuß' detention at regular intervals and have ordered it to continue. In January 2011 the Paderborn Regional Court ordered the continuation of his detention in a psychiatric hospital. Having heard him and taking into consideration the opinions of both an external psychiatric expert and a representative of the hospital where Mr Klinkenbuß was detained, the court found that it could not be expected with sufficient probability that he would not reoffend if released and it could not be ruled out that his sadistic tendencies persisted. His appeal against that decision was dismissed and, in July 2011, the Federal Constitutional Court declined to consider his constitutional complaint.

In the psychiatric hospital Mr Klinkenbuß underwent several therapy courses. After he had failed on several occasions in his attempts to complete a sex therapy course, the hospital authorities decided to discontinue those attempts for some time.

Mr Klinkenbuß complained that his continued detention in a psychiatric hospital, without receiving any therapy any longer and on the basis of insufficient expert advice, for more than 28 years, was in violation of Article 5 § 1 (right to liberty and security).

No violation of Article 5 § 1

Adiele and Others v. Greece (no. 29769/13)*
Papadakis and Others v. Greece (no. 34083/13)*

These two cases concerned the conditions of detention in Diavata Prison in Thessaloniki, Greece. The applicants in the first case are 53 individuals of various nationalities who are currently detained or were previously detained in Diavata Prison. The applicants in the second case are 62 individuals of various nationalities who are currently detained or were previously detained in the same prison.

The applicants complained of insufficient personal living space and of being detained in inadequately heated cells in poor hygiene conditions and being exposed to second-hand tobacco smoke.

Those applicants in the first case who are drug users complained of having to undergo drug withdrawal without medical supervision and without sufficient access to substitute drugs. The prisoners in the second case alleged a lack of ventilation in their cells and complained of having to share sanitary facilities with prisoners suffering from infectious diseases. They further alleged that the food budget was inadequate and that they had no recreational activities. Lastly, they complained of restrictions on their right to information.

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), the applicants complained about their conditions of detention and alleged that they had no effective remedy in that regard.

- case of ***Adiele and Others***:

Violation of Article 3 – in respect of Godwill Adiele, Thomas Aggelou, Ahmat Ahmat, Kyriakos Alexiadis, Georgios Alvanos, Nikolaos Amatoglou, Vasilios Anoudis, Pantelis Arabatzis, Charalambos Asimalopoulos, Fotios Asimoglou, Georgios Bakousoglou, Costache Catalin, Emmanouil Chaidar, Vasilios Charalambidis, Darko Despotovic, Nikolaos Dimopoulos, Panagiotis Dimou, Osagie Edoby, Ioannis Emetoglou-Ametoglou, Ertzan (Ertzian) Eminoglou, Georgios Fraggopoulos, Konstantin Georgiev, Maroudis Houseinoglou, Hristo-Krasimir Hristov-Kotsilov, Panagiotis Ioannidis, Kosmas Kalaitzis, Athanasios Karamanis, Nikoloz-Nikolay Kavtaradze-Kazaev, Savvas Kelesidis, Selatin-Seliaan Kiptis, Charalambos Konstantinidis, Christos Kyriakidis, Spyridon Makris, Ahmet Sali, Georgios Samaras, Feizi Sefke, Georgios Serif (Serifis), Veselin Tomov, Christos Tsakitzis, Dimitrios Tsakitzis, Nikolaos Tsakitzis, Roman Tsanev, Tkechukwu Ude, Momir Varagic, Athanasios Vasiliou, Dimitrios Ypsilantis and Vasilios Zografos
Violation of Article 13 in conjunction with Article 3 – in respect of the same 47 applicants

Just satisfaction: EUR 7,000 to each of these 47 applicants in respect of non-pecuniary damage and EUR 600 jointly in respect of costs and expenses

The Court further declared the application **inadmissible** as far as the six other applicants were concerned.

- case of ***Papadakis and Others***:

Violation of Article 3 – in respect of Zaven Antonian and Athanasios Kalyvas
Violation of Article 13 in conjunction with Article 3 – in respect of Zaven Antonian and Athanasios Kalyvas

Just satisfaction: EUR 6,000 each to Zaven Antonian and Athanasios Kalyvas in respect of non-pecuniary damage and EUR 600 jointly in respect of costs and expenses

As far as the 60 other applicants were concerned, the Court declared the application **inadmissible** or decided **to strike it out of its list of cases** taking note of the friendly settlement reached by the latter and the Greek Government.

Olivieri and Others v. Italy (nos. 17708/12, 17717/12, 17729/12, and 22994/12)*

The case related to four applications concerning the inability of the applicants – nine Italian nationals – who were parties to administrative court proceedings, to obtain compensation by means of the "Pinto" remedy, owing to the introduction of a new admissibility requirement in the form of an application for the case to be set down for an urgent hearing (*istanza di prelievo*).

On 23 August 1990 Mr G. Olivieri, Mr S.V., Mr A.R. and Mr G.V., employees of Benevento municipal council, lodged separate applications with the Campania Regional Administrative Court seeking the correction of the calculation of their years of service and an order against the local authority requiring it to pay the difference in each case. The applicants applied jointly for the case to be set down for hearing.

On 26 February 2008 the registry of the Regional Administrative Court gave notice to each party of the requirement to lodge a fresh application for the case to be set down for hearing, failing which the proceedings would lapse. Mr G. Olivieri and the heirs of the other parties lodged the relevant application. At the same time they lodged an application for compensation with the Naples Court of Appeal on the basis of the 2001 "Pinto Act", complaining of the excessive length of the

administrative proceedings. That application was rejected on the grounds that the persons concerned had not applied for the case to be set down for an urgent hearing, although this had been a condition for the admissibility of "Pinto" applications since 2008. The applicants lodged appeals on points of law, which were dismissed on the same grounds.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), the applicants complained of the length of the proceedings before the Campania Regional Administrative Court, which had lasted for over 18 years. They further argued that the conditions of admissibility of "Pinto" applications – in this instance the requirement to apply for the case to be set down for an urgent hearing – entailed a violation of their right to a court. The Court examined that complaint under Article 13 (right to an effective remedy) of the Convention.

Violation of Article 6 § 1
Violation of Article 13

Just satisfaction: EUR 22,000 (non-pecuniary damage) for each of the applications

Zyakun v. Ukraine (no. 34006/06)

The applicant, Vladimir Zyakun, is a Ukrainian national who was born in 1961 and is currently in detention. The case concerned his complaint that he had been ill-treated by the police and that a confession obtained from him under duress had been used in criminal proceedings against him.

According to Mr Zyakun he was arrested in Sumy on 27 June 2003 and taken to the regional police headquarters, where he was beaten by the police. Being questioned by a police officer on the following day, he denied any involvement in a murder which had happened in the Odessa region two weeks earlier. Later he was beaten again and subjected to pressure by the police with a view to obtaining a confession. He remained in detention, and on 2 July 2003 he wrote a confession without his lawyer being present. According to the police's arrest report, Mr Zyakun was arrested on 30 June 2003.

Together with a co-accused, Mr Zyakun was charged with the robbery and murder of three persons. Following Mr Zyakun's complaint of having been beaten and pressured by the police, an investigator from the regional prosecutor's office eventually refused to open criminal proceedings for want of proof against the police officers. In August 2005 Mr Zyakun was convicted of murder and sentenced to life imprisonment with confiscation of his property. Among other things, the court based the conviction on his written confession of 2 July 2003. In April 2006 the Supreme Court upheld the judgment on appeal.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Zyakun complained that police officers had ill-treated him to extract his confession. Furthermore, relying on Article 6 § 1 (right to a fair trial), he complained that the criminal proceedings against him had been unfair in that his conviction had been based on his confession obtained under duress.

Violation of Article 3 (inhuman and degrading treatment)
Violation of Article 6 § 1

Just satisfaction: EUR 12,000 (non-pecuniary damage)

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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.