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

Press Release
issued by the Registrar of the Court

ECHR 337 (2015)
03.11.2015

Judgments of 3 November 2015

The European Court of Human Rights has today notified in writing nine judgments[1]:

eight Chamber judgments are summarised below;

one Committee judgment, which concerns issues which have already been submitted to the Court, can be consulted on *Hudoc* and does not appear in this press release.

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

Hadžimejlić and Others v. Bosnia and Herzegovina (applications nos. 3427/13, 74569/13, and 7157/14)

The applicants, Zuhra Hadžimejlić, Marcel Crepulja, and Esad Busovača, are citizens of Bosnia and Herzegovina who were born in 1959, 1978, and 1958, respectively. The case concerned their placement in a social care home, where they are currently detained.

All three applicants were treated for schizophrenia. They were deprived of their legal capacity and placed under guardianship, of either a relative or a representative of a social work centre, either before or following their placement in the Drin social care home, which took place in 2007 (Ms Hadžimejlić), 2004 (Mr Crepulja) and 1999 (Mr Busovača) respectively.

Both Ms Hadžimejlić and Mr Crepulja, in separate proceedings, lodged a constitutional appeal challenging the lawfulness of their detention in the social care home. In both cases, the Constitutional Court of Bosnia and Herzegovina, in April and June 2013 respectively, found that the applicants' deprivation of liberty had been unlawful, as they had been held in psychiatric detention without a decision of the competent civil court, and that their rights had been breached by the lack of a judicial review of the lawfulness of their detention. The Constitutional Court ordered the local social work centres in charge to take measures to ensure respect for the applicants' rights. In both cases, a municipal court subsequently examined the necessity of the applicants' placement in the social care home and concluded, in September 2014 and November 2013 respectively, that their current state did not warrant their continued confinement there. However, the applicants have not yet been released from the social care home.

Relying, in substance, on Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights in particular, all three applicants complained: that their detention in the social care home had been unlawful, maintaining that they were being held there against their will and that they could not obtain release; and that there had been no judicial review of their placement there.

Violation of Article 5 § 1

Just satisfaction: 21,250 euros (EUR) to Ms Hadžimejlić, EUR 27,500 to Mr Crepulja and EUR 32,500 to Mr Busovača in respect of 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

Myumyun v. Bulgaria (no. 67258/13)

The applicant, Nuray Bayramali Myumyun, is a Bulgarian national who was born in 1979 and lives in the village of Gorno Sahrane (Bulgaria). The case concerned his ill-treatment by police officers and his complaint that the Bulgarian legal system had been too lenient towards the officers responsible for his ill-treatment.

On 20 February 2012, Mr Myumyun voluntarily went to the police for questioning about an investigation into a burglary. Once there, and during a period of several hours, Mr Myumyun was hit by police officers with a wooden bat and rubber truncheon, was kicked and beaten and had electric shocks administered to him. He alleges that he was ill-treated in order to force him into confessing to the burglary.

Mr Myumyun made a complaint on 27 February 2012 and the Regional Police Department opened an internal inquiry. In the ensuing disciplinary proceedings, the officers were found to have unlawfully detained Mr Myumyun and were punished with non-admission to promotion competitions for a period of three years. No finding of ill-treatment was made. In the criminal proceedings against the officers, the ill-treatment was confirmed and the officers convicted on 12 December 2013 of causing Mr Myumyun light bodily harm. Their criminal responsibility was, however, waived and replaced with administrative fines, the judge also holding that there was no need to additionally disqualify them from working as police officers. In August 2014, Mr Myumyun brought a successful claim for damages against the police; apparently this judgment has not yet become final.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Mr Myumyun complained that the domestic legal system's response to the ill-treatment to which he had been subjected had been inadequate and, in particular, that the penalties imposed on the officers had been too lenient having regard to the seriousness of their act.

Violation of Article 3

Just satisfaction: EUR 4,000 (non-pecuniary damage) and EUR 2,650 (costs and expenses)

Miķelsons v. Latvia (no. 46413/10)

The applicant, Kārlis Miķelsons, is a Latvian national who was born in 1959 and lives in Riga. The case concerned his arrest and detention on suspicion of abuse of office and assisting money laundering in a State-owned stock company of which he had been chairman.

On the morning of 15 June 2010 Mr Miķelsons' apartment was searched by officers from the Bureau for the Protection and Combating of Corruption. At 11:15 a.m. Mr Miķelsons was informed that he was under arrest. On 17 June 2010, the court ordered Mr Miķelsons' detention pending trial. Mr Miķelsons' lawyer was refused access to the documents in support of the application for pre-trial detention. On 21 June 2010, Mr Miķelsons lodged an appeal and again asked the court to grant access to the case file to enable him to effectively challenge his detention. The request was refused and his appeal against continuing detention was also unsuccessful. On 30 June 2010, Mr Miķelsons lodged a complaint regarding his arrest which was dismissed.

Mr Miķelsons complained in particular: that he had not been presented before an investigating judge within 48 hours of his arrest as required by domestic law; that he had been prevented from effectively challenging his detention as he had been denied access to the case file. He relied in particular on Article 5 §§ 1 and 4 (right to liberty and security / right to have lawfulness of detention decided speedily by a court).

No violation of Article 5 § 1
Violation of Article 5 § 4

Just satisfaction: Mr Miķelsons did not submit a claim for just satisfaction.

J.B. v. Poland (no. 57675/10)

The applicant, Jan Bestry, is a Polish national who was born in 1954 and lives in Warsaw. He is a former member of the Polish parliament. The case concerned his complaint about sanctions imposed on him for the infringement of the personal rights and slander of a journalist and a publishing company.

In October 2006, a series of articles appeared in three major Polish daily newspapers reporting that Mr Bestry had sexually abused young girls while working as a teacher in the 1980s. On 30 October 2006 Mr Bestry, who was a member of Parliament at the time, organised a press conference in the Parliament building, during which he stated that the journalists responsible for those articles had cooperated with an informer who had supplied the information in question and that the journalists had received money for disseminating it. On the following day, the daily newspaper *Rzeczpospolita* published an article which mentioned that in an interview with the paper Mr Bestry had said that the disclosure of the matters in question was "a plot" in which *Super Express*, another daily newspaper, was involved.

Subsequently the former editor-in-chief of *Super Express* and the newspaper's publishing company lodged a civil claim against Mr Bestry for the protection of their personal rights, alleging that their good name and credibility had been harmed by statements he had made at the press conference and in the article published by *Rzeczpospolita*. In May 2008 the regional court partially granted the claim and ordered Mr Bestry to publish an apology for the statements quoted in the newspaper article. On appeal, the appeal court amended the judgment insofar as it additionally ordered him to publish an apology for the statements made during the press conference. In April 2010 the Supreme Court refused to examine his cassation appeal.

In parallel criminal proceedings following the complaint by a journalist of the newspaper *Super Express*, Mr Bestry was convicted of two counts of slander and sentenced to a fine in April 2009. In criminal proceedings following a complaint by Mr Bestry alleging slander on two counts by that same journalist, the journalist was acquitted on both counts by a judgment which was eventually upheld in March 2014. The courts found in particular that the journalist had collected sufficient evidence to prove the veracity of the information in question.

Mr Bestry alleged a violation of his rights under Article 10 (freedom of expression) on account of the sanctions imposed on him.

No violation of Article 10

Chyła v. Poland (no. 8384/08)

The applicant, Jan Chyła, is a Polish national who was born in 1956 and lives in Lublin (Poland). The case concerned criminal proceedings against him and the application of a "dangerous detainee" regime.

Mr Chyła, who has a history of criminal convictions, was remanded in custody in December 2006 on suspicion of a number of offences, with which he was charged in March 2007, including several counts of robbery, extortion and causing bodily harm. His pre-trial detention was subsequently extended on numerous occasions and his appeal against the detention order and the decisions to extend it were unsuccessful. In March 2008 Mr Chyła was convicted as charged and sentenced to nine years' imprisonment and a fine, but the judgment was quashed on appeal in January 2009 and the case was remitted to the first-instance court. Later, he was again convicted, but the judgment was quashed once more and the case was remitted. Since December 2010, he has been serving a prison sentence imposed on him in another set of proceedings.

Mr Chyła lodged a complaint with the regional court in May 2011 alleging in particular a breach of his right to a trial within a reasonable time, which was dismissed.

Between January 2007 and November 2010 Mr Chyła was held under a "dangerous detainee" regime, imposed in particular on the basis of the fact that he was charged with numerous offences against human life and health, that he was a recidivist and that he had twice escaped from custody. Under that regime, he was subjected to a strip search every time he entered or left his cell and his visiting rights were severely restricted. During one year of his detention, between December 2006 and December 2007, he did not receive any visits at all. Numerous requests he made to take part in training sessions, workshops or sport activities were rejected by the prison authorities. As he refused to strip naked for a body search in order to be allowed to vote in the European Parliament elections in June 2009, as he had requested, Mr Chyła was taken back to his cell without being allowed to vote. His subsequent complaint about the matter was dismissed. According to Mr Chyła, there were delays in providing him with specialist consultations concerning the medical issues from which he suffers, including asthma, back pain and hypertension. According to his submissions, letters he received were monitored by the prison authorities.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Chyła complained that he had been unlawfully classified as a "dangerous detainee" and subjected to degrading treatment. He further complained, under Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), that the duration of his pre-trial detention had been excessive, and, under Article 6 § 1 (right to a fair trial within a reasonable time), that the length of the criminal proceedings against him had exceeded a "reasonable time".

Violation of Article 3
Violation of Article 5 § 3
Violation of Article 6 § 1

Just satisfaction: EUR 14,000 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

Olszewscy v. Poland (no. 99/12)

The applicants, Wiesław Olszewski and Grażyna Olszewska, husband and wife, are Polish nationals who were born in 1957 and 1963 respectively and live in Jedwabne (Poland). The case concerned their complaint that the authorities had failed to protect the life of their son, who had died under unclear circumstances, and that they had failed to conduct an effective investigation into the circumstances of his death.

The applicants' son, M.O., aged 22 at the time, was found dead on 6 March 2010 in a meadow in the area of Białystok, after having gone missing on 14 February 2010. The night before, he had been celebrating the end of university exams with friends. He was apprehended by the border patrol while taking a shortcut on his way back to the university campus and walking through the border guards area. He was then taken to a police station. The police, noting that he was drunk, but not to the extent that his placement in a sobering-up centre was necessary, eventually let him go at 4.30 a.m. Subsequently two of his family members spoke to him on the phone, but it was not clear where he was; he never returned to the university campus. The applicants started to search for him, in particular by contacting all hospitals and police stations in Białystok. Only on 19 February 2010 did the police inform them that their son had been taken to a police station on 14 February and then released.

After M.O.'s body had been found, an investigation into the circumstances of his death was opened by the district prosecutor on 9 March 2010. In June 2010 the prosecutor discontinued the investigation, finding that M.O. had died of hypothermia without involvement of any third persons. On appeal by the applicants – who maintained that the cause of M.O.'s death had not sufficiently

been established and referred to numerous shortcomings of the investigation, in particular a failure to include the results of an examination of his blood samples – the district court quashed the decision in January 2011 and remitted the case to the prosecutor for further examination. In June 2011 the investigation was again discontinued and, on appeal, in December 2012 the prosecutor ordered that it be resumed. It was again discontinued in a decision by the prosecutor – finding that due to difficulties with the evidence it was impossible to establish the course of events after M.O. had left the police station – which was eventually upheld by the courts in May 2013. A separate criminal investigation against the police officers who had been at the police station on 14 February 2010, concerning the alleged failure to perform their duties, was also discontinued, by a decision eventually upheld in March 2012.

Relying on Article 2 (right to life), the applicants complained that the police officers' negligence had resulted in the death of their son and that the authorities had failed to effectively and diligently examine the circumstances in which he had died.

No violation of Article 2 (right to life)
Violation of Article 2 (investigation)

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 8,000 (costs and expenses)

Stankiewicz and Others v. Poland (no. 48053/11)

The applicants in this case are Andrzej Stankiewicz and Grzegorz Gauden, Polish nationals who were born in 1974 and 1953 respectively, and the publishing company of the daily newspaper *Rzeczpospolita*. Mr Stankiewicz is a journalist working for *Rzeczpospolita* and Mr Gauden was, at the time of the events, its editor-in-chief. The case concerned civil proceedings against all three applicants following the publication of three articles on a legislative amendment to the Polish Tax Act which had entered into force on 1 September 2005.

The articles, of which Mr Stankiewicz was the author, appeared in *Rzeczpospolita* on 14 and 15 September 2005. They described the possible consequences of the amendment, the legislative process leading to its adoption and the role which a member of the National Council of Legal Advisers, a well-known expert on tax law, Ms D.S., had played in that process. In particular, one of the articles, with the headline "Mafia to pay no taxes", included comments made by D.S. and featured her photograph. It reported that the amendment, proposed by D.S., which limited the evidence that could be used in tax proceedings, "made it harder to prosecute the petrol mafia". Another article bore the headline "Dubious law to be changed".

D.S. lodged a claim for the protection of her personal rights against the applicants, which was initially dismissed in August 2007. However, in May 2008, the Warsaw Court of Appeal allowed her appeal. It ordered the applicants to publish an apology and pay 20,000 Polish zlotys to charity. The Supreme Court subsequently quashed the judgment and remitted the case to the appeal court, but in October 2009 the appeal court again allowed the action. In a decision of January 2011 the Supreme Court eventually amended the judgment only as regards the wording of the apology. The applicants were to apologise for ruining D.S.'s good name in particular by the use of headlines suggesting that D.S. had been guided by "reasons unworthy of merit and had infringed the principles of honesty".

The applicants complained that the Polish courts' decisions had breached their rights under Article 10 (freedom of expression).

Violation of Article 10

Just satisfaction: EUR 5,000 (pecuniary damage) to the applicant company *Gremi Media sp. z o.o.* and EUR 5,000 (non-pecuniary damage) each to Mr Stankiewicz and Mr Gauden

The Siseşti Greek-Catholic Parish v. Romania (no. 32419/04)*

The applicant is the Siseşti Parish of the Eastern-Rite Catholic Church, also known as the Greek-Catholic or Uniate Church.

The case concerned an action to recover possession of property which had been confiscated from the Parish when the communist regime was established in 1948.

Prior to 1948 the Greek-Catholic parishes had possessed a range of properties, lands and buildings. The Uniate denomination was dissolved in 1948 and the property of the Greek-Catholic Church was transferred to the State, apart from parish property, which was transferred to the Orthodox Church. The Uniate denomination was officially recognised after the fall of the communist regime in December 1989. As regards the legal situation of the former property of the Uniate parishes, a section of the Legislative Decree laid down that it should be adjudicated by joint commissions of representatives of the clergy of both denominations, and that in reaching their decisions the commissions should take account of "the wishes of the adherents of the communities to whom the properties belong". In the event of disagreement between the clerical representatives, the party interested in taking legal action could bring proceedings under ordinary domestic law.

Between 1998 and 2002 several unproductive meetings were held by representatives of the Siseşti Parish Eastern-Rite Catholic Church and Orthodox Church representatives. On 24 February 2004 the applicant's action was initially dismissed under a final judgment of the Supreme Court of Justice on the ground that the commission had not yet assessed the legal situation of the property in issue and that, moreover, part of that property came under special legislation. In April 2005 the applicant parish lodged a fresh claim with the Regional Court to recover possession of the property, over which it claimed rightful ownership. That Court dismissed that claim. The Court of Appeal referred the case back. The court adjourned its examination of the case from 2 June 2008 to 27 February 2009 on the ground that an objection as regards constitutionality had been transmitted to the Constitutional Court. On 21 September 2011 the court ordered the restitution of the church and the land at issue. The appeals lodged by both parties were dismissed. By judgment of 21 November 2012 the High Court upheld the decisions given.

Relying in particular on Article 6 § 1 (right to a fair hearing within a reasonable time) the applicant notably complained about the length of the proceedings concerning their action to recover possession of their places of worship.

Violation of Article 6 § 1 (length of proceedings)

Just satisfaction: EUR 1,000 (non-pecuniary damage) and EUR 900 (costs and expenses)

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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.