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

Press Release
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Judgments of 7 February 2017

The European Court of Human Rights has today notified in writing 13 judgments[1]:

eight Chamber judgments are summarised below; a separate press release has been issued for one other Chamber judgment in the case of *Lashmankin and Others v. Russia* (nos. 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, and 37038/13);

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

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

Wdowiak v. Poland (application no. 28768/12)

The applicant, Robert Wdowiak, is a Polish national who was born in 1975 and lives in Tryszczyn (Poland). The case concerned his contact rights with his child.

Mr Wdowiak's son, J., was born on 2 December 2002. Shortly after J.'s birth, Mr Wdowiak separated from his partner, M.K., and moved out of the flat they had been sharing. In 2005, Mr Wdowiak made his first court complaint that M.K. was hindering his contact with J.

In December 2005, the parties reached a friendly settlement before the Bydgoszcz District Court detailing when Mr Wdowiak would be able to have contact with the child. In 2006, most of the visits took place as scheduled, but some were made impossible by M.K.. Both parents applied to increase their own access rights and M.K. also indicated her intention to move to Germany with J.. M.K. withdrew her application in January 2007 and the District Court discontinued both proceedings. On appeal, the Bydgoszcz Regional Court found that the District Court had been wrong to discontinue Mr Wdowiak's application just because M.K. had withdrawn hers. It also established that Mr Wdowiak's access rights were not being respected, because M.K. had moved to Germany with J. in January 2007.

Mr Wdowiak was deprived of any contact with J. for a year after the child had been taken to Germany. M.K. returned with the child in January 2008, only after Mr Wdowiak had made a successful application under the Hague Convention on the Civil Aspects of International Child Abduction.

In April 2008, the District Court approved another settlement regarding Mr Wdowiak's access rights, which was modified in September 2009 to extend the amount of time Mr Wdowiak could spend with his son. In March 2010, the District Court ordered the parties to have counselling and to attend mediation sessions, noting their inability to cooperate. Mr Wdowiak and M.K. began to attend counselling, but M.K. pulled out. Owing to the inability of the parties to communicate and make joint decisions, the courts limited Mr Wdowiak's involvement in decision-making to only the most important decisions relating to J.'s life.

[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

In May 2012, Mr Wdowiak asked the court to modify the contact arrangements, claiming that his relationship with his son had got considerably worse and blamed M.K.'s behaviour for this. He also sought enforcement of the agreement of September 2009. In February 2013, M.K. applied to annul that agreement, stating that J. refused to see his father. After seeking expert opinions, the courts modified the access arrangements twice in 2013. J. was only to see Mr Wdowiak in public places and in the presence of his mother and a court guardian. The courts also granted Mr Wdowiak's request to seek a penalty payment from M.K. each time a visit did not take place. At a hearing in June 2014, Mr Wdowiak declared that he was no longer attending meetings with his son, as J.'s behaviour was disruptive and aggressive. Their last meeting took place in November 2013. In 2014 and 2015 further mediation and family counselling was ordered by the courts.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Mr Wdowiak complained that the Polish authorities had violated his family life by failing to take effective steps to enforce his right to have contact with his son.

No violation of Article 8

Dinu v. Romania (no. 64356/14)

The applicant, Florian Dinu, is a Romanian national who was born in 1972 and lives in Șopârlița (Romania). The case concerned his allegation that he had been beaten by police officers.

According to Mr Dinu, on 30 June 2013 two police officers arrested him at his house, after Mr Dinu's sister had called the emergency services and said that he was causing a disturbance. Mr Dinu claims that he did not resist arrest: but that nevertheless the policemen pushed him to the ground with his face down, handcuffed him with his hands behind his back, banged his head against a metal gate whilst dragging him off the premises, and punched him in the face when he was in the ambulance. The Government denies the allegations of ill-treatment, claiming that the injuries were not caused deliberately.

Mr Dinu was hospitalised, where he was diagnosed with a cervical spine injury and a minor cerebral trauma. He was fined 1,000 Romanian lei.

Mr Dinu's father lodged a criminal complaint against the policemen, claiming that they had abused his son. However, a prosecutor attached to the Olt prosecutor's office decided not to open a criminal investigation, finding that the officers had not injured Mr Dinu deliberately. Mr Dinu challenged the decision, but this was dismissed by a more senior prosecutor. Mr Dinu then appealed against the decision in court. However, in April 2014 the Balş District Court, sitting in private as a pre-trial chamber judge, dismissed the appeal and upheld the prosecutors' decisions.

Following an operation on Mr Dinu for his cervical spine injury, a medical report found that he continued to experience movement difficulties. A subsequent assessment in June 2015 found that he was suffering from a serious functional deficiency, and had completely lost his ability to work.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, Mr Dinu complained that he had been beaten by police officers, and that the criminal investigation into the incident had been ineffective: in particular, because the judge at the Balş District Court had examined his case in private and without summoning the parties.

Violation of Article 3 (inhuman and degrading treatment)
Violation of Article 3 (investigation)

Just satisfaction: 112 euros (EUR) (pecuniary damage), EUR 11,700 (non-pecuniary damage) and EUR 329 (costs and expenses)

Revision

Petroiu v. Romania (no. 33055/09)*

The applicant, Florica-Maria Petroiu, is a Romanian national who was born in 1932 and lives in Bucharest.

The request for revision related to a judgment of the European Court of Human Rights concerning a real estate restitution procedure.

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, Ms Petroiu complained of the lack of compensation for the deprivation of her property.

In a judgment of 24 November 2009 the Court had found no violation of Article 1 of Protocol No. 1 on the ground of absence of compensation for the deprivation of property suffered by Ms Petroiu. In a judgment of 25 March 2014 the Court had decided to award Ms Petroiu 462,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 2,025 in respect of costs and expenses.

On 13 June 2014 the Government requested the revision of both judgments on the basis of Article 80 of the Rules of Court, on the ground that new material had been discovered of which the Court had been unaware at the time of delivery of the judgments and which the Government considered likely to have a decisive impact on the outcome of the case.

The Court decided to revise its judgments of 24 November 2009 and 25 March 2014 and declared the application inadmissible.

Bubon v. Russia (no. 63898/09)

The applicant, Konstantin Bubon, is a Russian national who was born in 1974 and lives in Khabarovsk (Russia). He is a lawyer who also writes articles for various Russian law journals and online legal information databases and networks. The case concerned his complaint that the authorities had denied him access to information he had needed when researching an article on prostitution.

In May 2009 Mr Bubon wrote to his local police department asking for statistics in order to write an article on prostitution in the Khabarovsk region. He subsequently received a letter telling him that general crime statistics data was publicly available, but that information as specific as he had asked for was not processed and summarised by the police upon requests by private individuals. He was told to contact the Khabarovsk statistics service. However, they could not help him either as they had never been provided with the specific statistical information on prostitution as requested by Mr Bubon. Mr Bubon brought judicial proceedings, complaining about the authorities' refusal to provide him with the information he requested. His claim was ultimately dismissed in September 2009 on the ground that the authorities were not obliged to provide him with the information he had requested as it did not touch upon his rights or legitimate interests.

Relying on Article 10 (freedom of expression), Mr Bubon complained that the authorities had denied him access to the information he had required for his research.

No violation of Article 10

Mkhchyan v. Russia (no. 54700/12)

The applicant, Sergey Mkhchyan, is a Russian national who was born in 1933 and lives in Moscow. The case concerned the demolition of a garage built by Mr Mkhchyan on a plot of land classified as federal railway land.

In March 1994, the Russian Ministry of Railways ('the MPS') approved the construction of garages alongside the Oktyabrskaya railway in Moscow, intended to serve as a noise shield. In October 1994,

the land in question was assigned to the garage-building cooperative "Kashenkin Lug" ('GSK'), in accordance with the town-planning assignment.

In December 1994, Mr Mkhchyan joined GSK and paid his share for a garage. The garages were constructed and certified for use. In December 1996 the local administration issued Mr Mkhchyan with a certificate attesting to his possession of the garage as from 3 December 1994. However, he never had his property rights registered in the real estate register.

In March 2003, the Oktyabrskaya Railway concluded a lease agreement with GSK in respect of the land occupied by the garages. GSK continued to pay the rent due under the lease until 31 July 2007. Under the lease, the land was allocated for placement of garage boxes and the construction of permanent structures was prohibited. Temporary structures could only be built with written approval by the Oktyabrskaya Railway and had to be removed at the end of the lease. The lease could be terminated unilaterally for a number of reasons, including if the land was required for the purposes of the railway. In 2003, the MPS was succeeded by "Russian Railways" ('RZD').

In April 2011, RZD notified Mr Mkhchyan that he had to vacate his garage as there had been a unilateral termination of the lease agreement, the land being needed for the purposes of the railway. He refused to comply. RZD brought court proceedings against Mr Mkhchyan seeking the removal of his garage from the plot in question.

In November 2011, the Ostankinskiy District Court of Moscow ordered Mr Mkhchyan to remove his garage within ten days of the judgment becoming final and authorised RZD to remove the garage if he failed to comply with the court decision. Mr Mkhchyan appealed, claiming in particular that he was entitled to compensation. The Moscow City Court upheld the District Court decision on appeal, holding that the law did not provide for the possibility of claiming compensation for the demolition of an unauthorised construction.

In April 2012, the Ostankinskiy District bailiff's service in Moscow instituted enforcement proceedings. As Mr Mkhchyan had refused to comply voluntarily with the judgment of the District Court, RZD proceeded to demolish his garage. The Ostankinskiy District bailiff's service was informed and enforcement proceedings were terminated.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Mkhchyan complained that he had been unlawfully deprived of his property.

No violation of Article 1 of Protocol No. 1

Cvetković v. Serbia (no. 42707/10)

The applicant, Suzana Cvetković, is a Serbian national who was born in 1981 and lives in Niš (Serbia). The case concerned her contact rights with her child.

Ms Cvetković gave birth to a daughter, A.C, in February 1999. One year later, she married V.C., her daughter's biological father. In February 2005, V.C. lodged a claim with the Niš Municipal Court, seeking dissolution of the marriage, custody of A.C., and child maintenance.

In May 2005, the Niš Social Care Centre granted Ms Cvetković interim care and custody of A.C. Soon afterwards, while Ms Cvetković and A.C. were visiting a mental health care institute where the child was undergoing treatment, V.C. forcibly removed A.C. from her mother's custody and in doing so assaulted Ms Cvetković physically. In July 2005 the Niš Municipal Court issued an interim custody order requiring V.C. to surrender custody of A.C. to Ms Cvetković until the end of the marriage dissolution proceedings. Four failed attempts were made to enforce the order.

In January 2008, the Municipal Court dissolved the marriage, awarded custody of A.C. to V.C., and ordered Ms Cvetković to pay monthly child maintenance. The court held that Ms Cvetković was entitled to spend time with A.C. at the Doljevac Social Care Centre every Saturday. This judgment

was upheld on appeal to the Niš District Court and the Supreme Court of Serbia. The courts relied on an expert report by the Niš Mental Care Institute and found that, notwithstanding her initial forcible removal from Ms Cvetković's custody, it was in A.C.'s best interests to remain with her father, as separation could have a detrimental psychological impact. In September 2008, the Municipal Court suspended the interim custody proceedings. Ms Cvetković never sought enforcement of the judgment of January 2008 as regards the weekly meetings with A.C.

In March 2010, Ms Cvetković lodged an appeal with the Constitutional Court, alleging a breach of her parental and family rights as a result of the non-enforcement of the Municipal Court's interim custody order of May 2005. She also argued that the Supreme Court ruling on custody had failed to take into account A.C.'s best interests, had instead retroactively endorsed V.C.'s violent and unlawful conduct, and had permanently separated her from her child. The court dismissed her complaint regarding the interim custody order for being out of time and rejected her complaint regarding the Supreme Court on its merits, accepting the Supreme Court's reasoning entirely.

Following a review of the judgment of January 2008, the Niš Municipal Court granted Ms Cvetković custody of A.C. in October 2012 and ordered V.C. to pay child maintenance. A.C. moved in with her mother shortly after the judgment became final. In August 2015, A.C. moved back to her father's home and it appears that she is still living with him by choice. It also appears that V.C. filed a claim for review of the judgment of October 2012 on custody of A.C.; those proceedings are still pending.

Relying on Article 8 (right to respect for private and family life), Ms Cvetković complained that for a period of more than seven years she had had no contact with her child due to the Serbian authorities' failure to enforce the interim custody order. Ms Cvetković further complained that the Supreme Court's judgment of May 2009 granting custody of A.C. to V.C. and the Constitutional Court's subsequent approval of that judgment had both been arbitrary, effectively amounting to an endorsement of V.C.'s previous violent and unlawful behaviour.

No violation of Article 8

Just Satisfaction

Gümrükçüler and Others v. Turkey (no. 9580/03)*

The 34 applicants are Turkish nationals who were born between 1922 and 1996 and live in Turkey.

The case concerned the annulment of property deeds in respect of plots of land belonging to the applicants and their re-registration in the name of the Treasury, without payment of compensation, on the grounds that the land in question had formerly belonged to the national forestry sector.

Relying on Article 1 of Protocol No. 1 (protection of property) and Article 6 § 1 (right to a fair trial within a reasonable time), the applicants alleged that they had been deprived of their plots of land, classified as forest areas, without compensation, also complaining of the length of proceedings.

In its principal judgment of 26 January 2010 the Court found a violation of Article 1 of Protocol No. 1 and of Article 6 § 1.

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

Just satisfaction: The Court decided to award, to the applicants jointly, EUR 17,000 for non-pecuniary damage, on account of the violation of Article 1 of Protocol No. 1, and EUR 2,500 for costs and expenses.

İrfan Güzel v. Turkey (no. 35285/08)*

The applicant, İrfan Güzel, is a Turkish national who was born in 1971 and lives in Mardin (Turkey).

The case concerned the tapping of telephone calls made by Mr Güzel, who was suspected of arms trafficking, and his arrest and conviction on the basis of evidence provided by the phone-tapping operation.

The authorities launched an investigation into Mr Güzel's alleged arms-trafficking activities. The telephones of several suspects, including Mr Güzel, were tapped. The recordings showed that Mr Güzel was in contact with an individual residing in Iraq with whom he had concluded an agreement on a firearms transfer through the intermediary of a third person. On 14 January 2008 Mr Güzel and that third person were arrested, and six weapons and 128 rounds of ammunition were seized.

On 8 February 2008 the prosecution charged Mr Güzel and two other individuals with involvement in international arms trafficking and aiding and abetting the PKK, referring in particular to their telephone conversations and the weapons and ammunition seized. Mr Güzel was sentenced to twelve years, six months' imprisonment for aiding and abetting a terrorist organisation, which decision was upheld by the Court of Cassation on 31 March 2010.

Relying on Article 5 §§ 1 and 3 (right to liberty and security), Mr Güzel complained that he had been arrested and placed in pre-trial detention in the absence of any reasonable suspicion of commission of an offence, remaining in police custody for four days. Relying on Article 6 § 1 (right to a fair trial), he complained that recordings of his telephone conversations had been used in evidence against him. Relying on Article 13 (right to an effective remedy), taken in conjunction with Articles 5 and 6, he complained that he had had no effective remedy for his complaints.

Relying in particular on Article 8 (right to respect for private and family life) taken alone and in conjunction with Article 13 (right to an effective remedy), Mr Güzel complained that his telephone had been tapped in the absence of any prior judicial decision. Furthermore, he submitted that the conditions laid down in the Code of Criminal Procedure for implementing such measures had not been met and that he had had no effective remedy to contest the non-compliance with those rules.

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

Just satisfaction: The Court held that its judgment constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Güzel. It further awarded him EUR 1,000 for costs and expenses.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)
George Stafford (tel: + 33 3 90 21 41 71)