



Judgments of 7 June 2016

The European Court of Human Rights has today notified in writing eight judgments¹:

five Chamber judgments are summarised below; for two others, in the cases of *Enver Aydemir v. Turkey* (application no. 26012/11) and *Karabeyoğlu v. Turkey* (no. 30083/10), separate press releases have been issued;

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 ()*.

R.B.A.B. and Others v. the Netherlands (application no. 7211/06)

The applicants are five Sudanese nationals: a married couple, Ms R.B.A.B. and Mr H.S., their two daughters, X and Y, and their son Z. The children were born in 1991, 1993 and 1996, respectively. The case concerned the applicants' complaint that X and Y would be at risk of being exposed to female genital mutilation ("FGM") if they were expelled to Sudan.

The applicants entered the Netherlands in 2001. Ms R.B.A.B. and Mr H.S. subsequently filed asylum applications on two occasions, in 2001 and 2003, on their own behalf and on behalf of their children, which were each rejected. In 2005 they filed a third asylum request, based on the claim that, if they were sent back to Sudan, their daughters X and Y would be subjected to FGM, due to tribal and social pressure. That request was also rejected, in particular on the grounds that since the applicants had not substantiated their identities or given a credible statement concerning their previous place of residence in Sudan, it was not established that they did not belong to the group of higher educated people who – according to a report drawn up by the Netherlands Ministry of Foreign Affairs – were able to resist the practice of female circumcision.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicants complained that their expulsion to Sudan would expose X and Y to the risk of being subjected to FGM.

No violation of Article 3 – in the event of Ms R.B.A.B., Mr H.S., Y and Z's expulsion to Sudan
Application **struck out of** the Court's list of cases in so far as it concerned the complaints brought by X

CICAD v. Switzerland (no. 17676/09)*

The applicant association, CICAD (Inter-community Coordination against Anti-Semitism and Defamation), was established under Swiss law and is registered in Geneva (Switzerland).

The case concerned a judgment against the CICAD association in civil proceedings for describing statements by a university professor as anti-Semitic on its website.

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 2005 a book entitled *Israël et l'autre* ("Israel and the Other") was published with the support of the University of Geneva, edited by W.O., a professor of political science who was himself of Jewish descent through his mother. The book contained a series of contributions from academics and intellectuals on the role of Judaism in the policy pursued by the State of Israel and the consequences thereof. Professor W.O. supervised the publication and wrote the foreword.

On 28 November 2005, following the publication of the book, CICAD published an article in Newsletter no. 115 on its website, in which the author (M.S.) criticised the book and alleged that W.O. had made anti-Semitic statements in the foreword. Professor W.O. responded to the allegations in the association's Newsletter of 18 January 2006. On 11 March 2006 an article by M.S. that was very similar to his previous article was published in *Cahiers Bernard Lazare*, concerning the book *Israël et l'autre* and the professor's statements.

On 11 July 2006 Professor W.O. brought a civil claim against CICAD and M.S., alleging unlawful interference with his personality rights. On 31 May 2007 the Canton of Geneva Court of First Instance allowed his claim, finding that the comments by the author of the article were unlawful. It ordered the removal of the offending article from the association's website and the publication of the findings reached in its judgment in the association's Newsletter and the *Revue juive*. CICAD and M.S. appealed to the Canton of Geneva Court of Justice, which upheld the first-instance judgment on 21 December 2007, specifying that only the most significant findings made in its judgment were to be published. It held, among other things, that an attack on a person's honour for the purposes of the Civil Code was to be construed more broadly than in a criminal context, extending to professional, economic and social standing, and that on account of Professor W.O.'s occupation, the allegation levelled at him by the association was likely to lower him significantly in public esteem. An appeal by CICAD and M.S. to the Federal Court was dismissed on 28 July 2008.

Relying on Article 10 (freedom of expression) of the Convention, CICAD complained about the civil judgment against it for describing the statements of a university professor as anti-Semitic.

No violation of Article 10

Cevat Özel v. Turkey (no. 19602/06)*

The applicant, Cevat Özel, is a Turkish national who was born in 1948 and lives in Istanbul (Turkey).

The case concerned a telephone surveillance operation in respect of Mr Özel, a lawyer.

On 17 September 2004 a public prosecutor applied to the 8th Division of the Istanbul Assize Court for a warrant to monitor eight mobile phone numbers, including that of Mr Özel, on the grounds that the persons to whom the numbers belonged were in contact with two former shareholders of the Imarbank private bank who were wanted for crimes committed by an organised group, banking offences and embezzlement and had fled the country. The 8th Division of the Istanbul Assize Court granted the warrant for a duration of three months.

In a letter dated 17 December 2004 the public prosecutor ordered the Istanbul Security Directorate to stop enforcing the warrant for the monitoring of certain telephone numbers, including that of Mr Özel, and the recordings made were destroyed on an unknown date.

In 2005, while consulting a file at the registry of the 7th Division of the Istanbul Assize Court, Mr Özel noticed the letter in question. On 18 April 2005 he brought an action for damages against the three members of the 8th Division of the Istanbul Assize Court, arguing that their decision had contravened the applicable legislation, but his action was dismissed by the 4th Civil Division of the Court of Cassation on 8 November 2005. In the same decision Mr Özel was ordered to pay damages to the judges in question, as provided for by the Code of Civil Procedure in the event of such an action being dismissed. The decision was upheld by the combined civil divisions of the Court of Cassation on 15 March 2006.

Relying on Article 8 (right to respect for private and family life), Mr Özel complained of an infringement of his right to respect for his private life as a result of the telephone tapping.

Violation of Article 8

Just satisfaction: 7,500 euros (EUR) (non-pecuniary damage) and EUR 5,000 (costs and expenses)

Knick v. Turkey (no. 53138/09)

The applicant, Dieter Claus Knick, is a German national who was born in 1960 and lives in Bad Dürkheim (Germany). The case concerned the transfer and subsequent sale of Demirbank in 2000, Turkey's fifth largest private bank at the time, and Mr Knick's complaint that, as a shareholder of that bank, he had been deprived of his shares.

In December 2000 Demirbank's management and control was transferred to the Savings Deposit Insurance Fund ("the Fund") by a decision of the Banking Regulation and Supervision Board ("the Board"). In that decision the Board held that Demirbank's assets were insufficient to cover its liabilities and that the continuation of its activities would threaten the security and stability of the financial system.

In administrative proceedings brought by the main shareholder of Demirbank – namely, Cingilli Holding – against the Banking Regulation and Supervision Agency ("the Agency"), the Supreme Administrative Court ordered, in a judgment of November 2004, the annulment of the takeover of the bank by the Fund. The court held in particular that the takeover without investigating any further options had been unlawful.

While the proceedings were pending, the Fund sold Demirbank to the HSBC bank. In September 2001, the main shareholder of Cingilli Holding brought administrative proceedings against the Fund, seeking the annulment of the agreement to sell the bank. The courts found for the shareholder and annulled the agreement by a 2004 judgment eventually upheld in 2006.

In the course of those events, Mr Knick brought two unsuccessful sets of proceedings. Following the transfer of Demirbank to the Fund, he first claimed compensation from the Board; and, having received no reply, then brought compensation proceedings against the Agency. That case was eventually dismissed as out of time, the decision being upheld in March 2007. Second, following the annulment of the agreement to sell the bank to HSBC, he applied to the Agency and the Fund respectively, requesting the restitution of his rights as a shareholder. Those requests were eventually rejected, the decision being upheld in October 2008.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Knick complained that he had been illegally deprived of his shares in Demirbank and that he had been unable to obtain any compensation.

Violation of Article 1 of Protocol No. 1

Just satisfaction: The Court held that the question of just satisfaction (Article 41 of the Convention) was not ready for decision, and reserved it for examination at a later date.

Şahin Kuş v. Turkey (no. 33160/04)*

The applicant, Şahin Kuş, is a Turkish national who was born in 1964 and lives in Konya (Turkey). The case concerned his removal from his teaching post following a change affecting the equivalence of his degree obtained abroad (Syria).

Mr Kuş studied "Arabic language and literature" at Damascus University and graduated on 8 June 1993. The degree was subsequently recognised on 16 August 1993 by the Turkish Higher Education Council (YÖK) as being equivalent to a bachelor's degree. Mr Kuş then studied for a master's in

“Arabic language and rhetoric” at the Turkish University of Selçuk (Konya) and he graduated in 1996. On 25 December 1996 he was appointed to a teaching post by the Ministry of National Education and started working on 14 May 1997 in a primary school in Aralık (İğdır).

On 16 July 1997 the YÖK decided not to grant any more certificates of equivalence for theology degrees obtained abroad, but also for any other qualification obtained in a higher education institution where theology was taught. The YÖK also annulled certificates issued previously, including that of Mr Kuş. He was thus removed from his post on 1 September 1997, after the Ministry annulled his appointment on 30 July 1997.

Subsequently, in a decision of 10 December 1997 amending that of 16 July 1997, the YÖK decided not to annul the certificates of equivalence previously granted, but to endorse them with the wording “this certificate is not valid for the appointment of primary and secondary school teachers”. On 5 May 1998 the YÖK thus restored Mr Kuş’ certificate with that endorsement.

On 4 October 1997 Mr Kuş applied for the annulment of the decisions of the YÖK and the Ministry, but his application was dismissed by the Supreme Administrative Court on 3 February 1999; the decision was upheld by the plenary assembly of the administrative divisions of that court on 19 January 2000.

Mr Kuş complained about the decisions leading to the annulment and then the modification of his certificate of equivalence.

Violation of Article 8 (right to respect for private and family life)

Just satisfaction: EUR 7,500 (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.