



## Judgments of 7 July 2020

The European Court of Human Rights has today notified in writing 17 judgments<sup>1</sup>:

seven Chamber judgments are summarised below;

one separate press release has been issued for one Chamber judgment in the case of *K.A. v. Switzerland* (no. 62130/15);

nine 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 (\*).*

### Dimo Dimov and Others v. Bulgaria (application no. 30044/10)

The applicants, Mr Dimo Mitev Dimov, Mr Kostadin Donchev Donchev, Mr Nacho Ivanov Yanakiev and Mr Rumen Bonchev Boyukliev, are four Bulgarian nationals who were born in 1976, 1981, 1979 and 1969 respectively and live in Stara Zagora. At the relevant time the first three applicants were police officers based at the Stara Zagora police station. The fourth applicant is a businessman in the same city. The case concerned the applicants' placement in pre-trial detention and the national courts' review of the lawfulness of that detention.

On 9 November 2009 the four applicants were placed under investigation for conspiracy, three charges of extortion and one charge of interfering with evidence in criminal proceedings. In particular, they were accused of having persuaded, using threat, several owners of nightclubs in Stara Zagora to enter into a contract with a security company based in the same city.

On 16 November 2009 the Stara Zagora Regional Court decided to place all of the applicants in pre-trial detention. The Plovdiv Court of Appeal upheld the regional court's decision.

In January 2010 the four applicants submitted requests for release through the Sofia City Prosecutor's Office.

On 1 February 2010 the Stara Zagora Regional Court dismissed the four applicants' request.

On 9 February 2010 the Plovdiv Court of Appeal dismissed an appeal by the applicants against the decision of 1 February 2010. The four applicants submitted further requests for release.

By a decision of 12 April 2010, the Stara Zagora Regional Court dismissed the applicants' requests. It considered that the evidence in the case file provided sufficient grounds for reasonable suspicions against the four applicants.

On 20 April 2010 the Plovdiv Court of Appeal examined and dismissed an appeal lodged by the applicants against the decision of 12 April 2010.

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

On 20 July 2010 the Plovdiv Regional Court dismissed the applicants' new requests for release. The Plovdiv Court of Appeal dismissed an appeal by the applicants against the Plovdiv Regional Court's decision.

On 16 November 2010 the third applicant was released by a court decision of 15 November 2010.

On 17 November 2010 the first, second and fourth applicants were also released following an order by the prosecutor, on the grounds that the maximum pre-trial detention period allowed by law had expired.

The case was subsequently examined by the courts. Following several adjournments during which the case was sent back to the prosecutor's office for further investigation, on 8 August 2014 the specialised criminal court terminated the criminal proceedings against the applicants.

Relying in particular on Article 5 § 4 (right to a speedy decision on the lawfulness of detention) of the European Convention on Human Rights, they submitted that there had been no effective review by the national courts of the lawfulness and necessity of their detention and that their requests for release had not been examined promptly. Relying on Article 5 § 5 (right to liberty and security) of the Convention, they also complained that they had not been entitled to compensation for the alleged violations of their rights.

**Violation of Article 5 § 4** – because of the lack of effective review by the national courts of the lawfulness and necessity of Mr Boyukliev's detention, because one of his requests for release in March 2010 had not been reviewed promptly and because he had not been allowed to submit further requests for release for a period of two months.

**Violation of Article 5 § 5** – in respect of Mr Boyukliev

**Just satisfaction:** 5,000 euros (EUR) (non-pecuniary damage) and EUR 1,955.65 (costs and expenses) to Mr Boyukliev

## Pósa v. Hungary (no. 40885/16)

The applicant, István Pósa, is a Hungarian national born in 1975 who lives in Sátoraljaújhely.

The case concerned alleged police ill-treatment when the applicant was arrested.

In October 2011 a unit of the Anti-Terrorism Task Force ("TEK") arrived at the applicant's home in order to arrest him as part of an investigation into robbery.

The applicant submitted that he had been dragged along the ground, kicked and beaten during his arrest. Subsequent medical examinations showed he had bruises on his arms and back and abrasions on his back and left knee. Based on those findings, the National Investigation Office began an investigation into possible ill-treatment but in September 2012 the prosecutor closed the case.

The prosecutor found that although the applicant had suffered injuries during his arrest, it could not be established that they had resulted from a deliberate offence rather than from a police operation carried out lawfully. He also noted that a full video-recording of the arrest, made by the police at the time, was no longer available as it had been destroyed following the statutory 30 day period.

A complaint by the applicant about the decision to discontinue the investigation was dismissed with final effect in November 2012 by the Pest County Chief Public Prosecutor's Office.

The applicant brought substitute private prosecution proceedings against the two TEK officers involved and in February 2015 the Budapest Surroundings High Court acquitted the defendants.

The court noted that the police medical report sheet that was normally filled in when suspects were apprehended was missing from the file and that the full version of the video-recording was no longer available. It found that the applicant had not been ill-treated and that the minor injuries he had sustained had been caused accidentally. That judgment was upheld on appeal in February 2016.

Relying on Article 3 (prohibition of torture), the applicant complained of police brutality and that the investigation into his allegations had been ineffective.

**No violation of Article 3** (treatment)

**Violation of Article 3** (investigation)

**Just satisfaction:** EUR 7,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

### Scerri v. Malta (no. 36318/18)

The four applicants are Maltese nationals, Nikolina Scerri, born in 1936, Joseph Scerri, born in 1972, Mario Scerri, born in 1977, and Raphael Scerri, born in 1968.

The case concerned a dispute with the authorities over compensation for expropriated land.

In 2003 the applicants were offered approximately 3,471 euros (EUR) in compensation for land which had been expropriated in 1961 and which the Government made use of in 1993 for the construction of a school and grounds.

The applicants objected to the valuation as they considered it too low and based on a wrong premise: they argued that it had been categorised as agricultural land, as was the case in 1961, whereas by 2003, when they had been offered compensation, it had become developable. Furthermore, much higher sums had been awarded for other property nearby. In 2009 the Land Arbitration Board raised the compensation sum to EUR 20,134, still classifying the land as agricultural. The LAB's decision was upheld on appeal in November 2013.

In May 2013 the applicants raised a constitutional complaint, relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention, alone and in conjunction with Article 14 (prohibition of discrimination) and Article 6 (right to a fair trial) of the Convention. At first instance, the Civil Court (First Hall) in its constitutional competence upheld the complaints in October 2016, ordering much higher compensation and making an award for non-pecuniary damage.

On appeal, the Constitutional Court in January 2018 confirmed the Article 6 violation and awarded EUR 7,500 for non-pecuniary damage in relation to the delay in offering compensation, but revoked the rest of the judgment, albeit adjusting the compensation to EUR 26,093 based on the guidelines in *Schembri and Others v. Malta* (just satisfaction).

Relying in particular on Article 1 of Protocol No. 1, the applicants complained about the compensation awarded to them.

Under Article 6 § 1, they complained about the Constitutional Court bench being composed of the same three judges who had decided their civil case on appeal in November 2013.

**Violation of Article 1 of Protocol 1**

**Violation of Article 6 § 1**

**Just satisfaction:** EUR 27,000 (pecuniary damage), EUR 9,000 (non-pecuniary damage) and EUR 2,725 (costs and expenses) to the applicants jointly.

### Michnea c. Roumanie (no 10395/19)

The applicant, Gheorghe Michnea, is a Romanian national who was born in 1974 and lives in Bresso, Italy.

The case concerned his complaint about Romanian courts in a child custody dispute.

The applicant married another Romanian national, X, in 2016, who moved to be with him in Italy, where he had lived and worked since 2006. They had a daughter, Y, in March 2017. They all lived

together in Italy, with the parents exercising joint authority over Y from birth. In August 2017 X took the child to Romania without the applicant's consent.

In February 2018 the applicant lodged an action with Bucharest County Court under the provisions of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"), seeking the return of the child to Italy.

In April 2018 the County Court allowed the request, but in June of the same year the Bucharest Court of Appeal quashed the decision and found that the child should stay in Romania, which was where she was habitually resident. Among other things, it found that the lawful residence of the applicant and his wife was still in Romania and that their flat in Italy had been rented temporarily.

In May 2018 a court granted the couple a divorce, giving the mother sole parental responsibility.

The applicant complained under Article 8 (right to respect for private and family life) about the refusal of the Romanian courts to order the return of his child to Italy.

#### **Violation of Article 8**

**Just satisfaction:** EUR 7,500 (non-pecuniary damage) and EUR 4,225 (costs and expenses)

### **Voica c. Roumanie (n° 9256/19)**

The applicant, Alexandra-Livia Voica, is a French and Romanian national born in 1982 who lives in Bucharest.

The case concerned the applicant's complaint about Romanian court decisions ordering her to return her children to joint parental authority in France.

In September 2016 a French court granted the applicant and her former husband, X, joint parental authority over their two children. It established the children's residence as being with the applicant, who at that time was living in France, while the former partner was granted contact rights.

In 2017 she moved to Romania with the children after receiving a job offer and X subsequently began proceedings for the return of the children under the Hague Convention, lodging an action with Bucharest County Court in March 2018, which upheld his request.

Among other things, it found that the children's habitual residence had been in France and that the parents had had joint parental authority. Under French law, the children's residence could only be changed if both parents agreed or, in there was no such agreement, by a court authorisation.

The court also examined the French court decisions on parental authority in the case and considered alleged abusive behaviour by X, but found that it did not constitute the exception of "grave risk" preventing the children's return in accordance with the Hague Convention. The County Court's decision was upheld on appeal in August 2018. The courts also dismissed objections by the applicant to enforcement of the return decision.

In October 2019 the Paris Court of Appeal dismissed an appeal by the applicant against the original custody decision of September 2016. It also established the children's residence as being with their father in France and granted the applicant contact rights only in that country. The parents were required to obtain each other's approval before taking the children abroad.

The applicant raised complaints about the Romanian court decisions in her case under various Articles of the Convention. The Court dealt with them under Article 8 (right to respect for private and family life) alone.

#### **No violation of Article 8**

## Rashkin v. Russia (no. 69575/10)

The applicant, Valeriy Fedorovich Rashkin, is a Russian national who was born in 1955 and lives in Saratov.

The case concerned his being found guilty of defamation for remarks he had made at a political rally.

In November 2009 the applicant, at the time a Member of Parliament from the opposition Communist Party, made a speech in Saratov for the 92nd anniversary of the Bolshevik Revolution. He accused various politicians of crimes against the nation, including Mr Volodin, a Member of Parliament from the Saratov Region from the ruling United Russia party.

He said, among other things, that, “All these crimes weigh heavily on the powers that were behind the 1991 coup, on the Yeltsins, Volodins, Sliskas, Medvedevs, and Putins. The crimes are on them and can only be washed away with blood. With blood should they wash away the disgrace they have brought upon us”.

Mr Volodin brought and won a defamation claim against the applicant, the court in April 2010 granting him damages of one million Russian roubles (25,640 euros). The judgment was upheld on appeal.

The applicant complained under Article 10 (freedom of expression) about being found liable for defaming another Member of Parliament.

### Violation of Article 10

**Just satisfaction:** EUR 7,800 (non-pecuniary damage).

## Gros v. Slovenia (no. 45315/18)

The applicant, Vitomir Gros, is a Slovenian national who was born in 1942 and lives in Kranj (Slovenia).

The case concerned his complaint of having been denied access to a court to challenge municipal decisions to classify paths crossing his land as “public roads”.

In 2016 the applicant, acting as a trustee for the unidentified heirs of denationalised property, sought to challenge Ordinances adopted by the Municipality of Kranj which had classified roads running over two plots of land as “public roads”. The Ordinances, one of which had been in force since 2004, had led to the annulment in 2016 of decisions to denationalise the plots, which the applicant was managing and alleged to have owned.

In February 2018 the Constitutional Court rejected his application for a review of the Ordinances as having been lodged outside the time-limit of one-year since the Ordinances had entered into force (objective time-limit) or since he had become aware of the adverse impact of the Ordinances (subjective time-limit).

The court reasoned that he should have known about the classification of the roads, which had dated from the early 2000s, and had not explained why he could not have learned of the classification before being served with the annulment decision of 2016. He had thus not met the required time-limit for his application.

An appeal against the annulment decision of 2016 having been granted, the relevant proceedings are still ongoing.

The applicant complained under Article 6 § 1 (right to a fair trial) that he had been denied the right of access to a court by the Constitutional Court.

### Violation of Article 6 § 1

**Just satisfaction:** EUR 1,500 (non-pecuniary damage) and EUR 2,860 (costs and expenses).

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