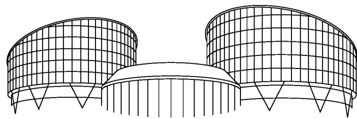

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 354 (2016)
08.11.2016

Judgments of 8 November

The European Court of Human Rights has today notified in writing 20 judgments[1]:

seven Chamber judgments are summarised below; for two others, in the cases of *Figueiredo Teixeira v. Andorra* (application no. 72384/14) and *Yabloko Russian United Democratic Party and Others v. Russia* (no. 18860/07), separate press releases have been issued;

11 committee judgments, which concern issues which have already been submitted to the Court, can be consulted on Hudoc and do not appear in this press release.

The judgments below are available only in English.

Pönkä v. Estonia (application no. 64160/11)

The applicant, Markus Pasi Pönkä, is a Finnish national who was born in 1987 and lives in Helsinki. The case concerned his complaint that, despite requesting to be heard in person in civil proceedings against him, the courts had examined his case in a simplified written procedure.

Mr Pönkä was convicted of murder in Estonia in 2007 and was transferred to Finland to serve his sentence. In December 2008 civil proceedings were brought against Mr Pönkä in Estonia by the owner of the apartment where the murder had taken place claiming compensation for damage to his property and cleaning bills. The domestic court decided to use a simplified procedure to examine the case as the claim was for less than 2,000 euros (EUR). The parties were asked if they wished to be heard. Mr Pönkä replied that he wished for the case to be examined at a court hearing: he notably requested that he and two forensic experts be summoned and questioned in court in order to give evidence that he had not committed murder but had acted in self-defence. In July 2010 the court nonetheless opted for the written procedure. It relied on the relevant provision of the Code of Civil Procedure according to which a written procedure could be used when the amount of the claim was under a certain amount and when a party had significant difficulty in appearing before court due to the length of his or her journey or for any other good reason. In December 2010 the courts ruled on the case, accepting the claim of the plaintiff in part, that is the equivalent of EUR 1, 428. Mr Pönkä's appeals were all refused, ultimately by the Supreme Court in May 2011.

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, Mr Pönkä complained that the civil proceedings against him had been unfair because no oral hearing had been held for him and two witnesses to give evidence.

Violation of Article 6 § 1

Just satisfaction: 1,000 euros (EUR) (non-pecuniary damage) and EUR 2,300 (costs and expenses)

[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

Szanyi v. Hungary (no. 35493/13)

The applicant, Tibor Jenő Szanyi, is a Hungarian national who was born in 1956 and lives in Budapest. He was a Member of Parliament and part of the largest opposition party, the Hungarian Socialist Party. The case concerned the sanctions and limits imposed upon Mr Szanyi's conduct in Parliament.

During a parliamentary plenary session on 18 March 2013, Mr Szanyi showed his middle finger in the direction of other opposition MPs. In response to the incident, later that month Mr Szanyi was fined 131,410 Hungarian forints (approximately 450 euros) by the parliamentary plenary, which adopted a proposal to impose the fine that had been put forward by the Speaker.

In May of 2013, on two separate occasions the Speaker refused interpellations that had been put forward by Mr Szanyi, on the grounds that they contained statements that were injurious to the prestige of Parliament and inadmissible in a democratically functioning system. The interpellations were addressed to the Minister of National Development, and concerned the national tender for tobacco retail licences.

No remedy lay against either the decision to impose the fine, or the decisions to refuse Mr Szanyi's interpellations.

Relying in particular on Article 10 (freedom of expression) of the European Convention, Mr Szanyi complained that the measures of fining him and banning his interpellations had infringed his right to freedom of expression.

Violation of Article 10 - on account of the fine imposed
Violation of Article 10 - on account of the banning of nterpellations

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Szanyi. It further awarded him EUR 450 for pecuniary damage, in the event that he had already paid the fine, as well as EUR 2,650 for costs and expenses.

Kraulaidis v. Lithuania (no. 76805/11)

The applicant, Mindaugas Kraulaidis, is a Lithuanian national who was born in 1985 and lives in Vilnius. The case concerned the investigation into a traffic accident.

In April 2006 Mr Kraulaidis, riding his motorcycle, collided with a car and suffered serious damage to his spinal cord, which left him unable to walk.

A pre-trial investigation was immediately opened into the accident. The scene of the accident was examined and a police investigator drew up a report, including a sketch indicating the location of the car and motorcycle. Mr Kraulaidis, the driver of the other car and eye-witnesses to the accident were also questioned, all giving contradictory testimonies. Over the next five years four forensic examinations of the circumstances of the accident were carried out, and two rounds of additional questions were made, to clarify contradictions between different expert opinions. Throughout the domestic proceedings, Mr Kraulaidis' mother complained that the forensic reports had been based on an inaccurate sketch of the accident which had never been signed by either of the drivers. A district prosecutor was of the view that Mr Kraulaidis had legitimate doubts about the accuracy of the sketch and, following an inquiry, it was established that the police investigator responsible for the sketch had not performed her duties properly. Eventually, however, in May 2011 court-appointed experts concluded that Mr Kraulaidis had exceeded the speed limit when overtaking and had not slowed down to avoid the collision. Shortly afterwards, the pre-trial investigation, closed and reopened in total three times on the grounds that not all the essential circumstances of the case had been examined, was discontinued as time-barred.

Mr Kraulaidis' civil claim for damages against the driver of the car was dismissed in 2012, based on the forensic reports drawn up during the pre-trial investigation finding that he himself had caused the accident.

Mr Kraulaidis' complaint about the ineffectiveness of the pre-trial investigation into the circumstances of the traffic accident which had left him disabled was examined under Article 3 (prohibition of inhuman or degrading treatment).

Violation of Article 3 (investigation)

Just satisfaction: EUR 3,000 (non-pecuniary damage) and EUR 753 (costs and expenses)

Naku v. Lithuania and Sweden (no. 26126/07)

The case concerned diplomatic immunity in labour relations.

The applicant, Sniegė Naku, is a Lithuanian national who was born in 1959 and lives in Vilnius.

She worked at the Swedish embassy in Vilnius for 14 years before being dismissed in January 2006. Recruited by the Swedish Embassy in 1992 in Lithuania on a Lithuanian contract, she initially carried out secretarial duties before being promoted to culture, information and press officer in 2001. In particular, her job description was modified – first in November 2001 and then in March and November 2005 – to reflect that she worked on culture and information matters under the guidance of Swedish diplomatic staff.

In 2004 a conflict arose between Ms Naku and her employer over her responsibilities; this conflict escalated in the autumn of 2005 when a new counsellor for cultural affairs was appointed. In November 2005 the situation culminated in Ms Naku being given a caution and two days to hand in her resignation. She went on sick leave from that point on; the leave was prolonged on a weekly basis and without interruption until March 2006. While on sick leave, she was notified of disciplinary proceedings against her for gross misconduct and was then dismissed from her post in January 2006.

Ms Naku thus brought a civil claim against the Swedish embassy before the Lithuanian courts, complaining of unlawful dismissal. In particular, she alleged that she had been dismissed while on sick leave, which was a clear breach of Lithuanian labour law. However, the Lithuanian lower courts decided to discontinue the case, accepting the embassy's request that Ms Naku's complaints not be examined on grounds of diplomatic immunity. In April 2007 the Supreme Court ultimately upheld the lower courts' conclusion, concluding that the duties which had been assigned to her – as an employee in a diplomatic representation of a foreign State – contributed to the Kingdom of Sweden's sovereign functions. Therefore, the parties were not linked by legal employment relations regulated by private law, but by legal service regulations under public law, that is to say relations for which a State may invoke diplomatic immunity.

In the meantime, the trade union for locally employed staff at the Swedish embassy, of which Ms Naku was the chair, had made several written complaints to the embassy about working conditions; the dispute received media coverage in Sweden in July 2005.

Relying in particular on Article 6 § 1 (access to court), Ms Naku alleged that she had been deprived of access to court to complain about her dismissal as her Swedish employer had invoked jurisdictional immunity and this had been upheld by the Lithuanian courts. She maintains in particular that her job description – as part of the embassy's administrative and technical personnel – showed that she had not held the kind of high-ranking position that would allow State immunity; nor could she have turned to the Swedish courts to make a claim about an employment contract which had been regulated by Lithuanian law.

Violation of Article 6 § 1 (access to court) – by Lithuania
The Court further declared the application **inadmissible** insofar as it was lodged against Sweden

Just satisfaction: EUR 8,000 (non-pecuniary damage) and EUR 17,000 (costs and expenses)

Urbšienė and Urbšys v. Lithuania (no. 16580/09)

The applicants, Rimanta Irena Urbšienė and Dalius Urbšys, are Lithuanian nationals who were born in 1963 and 1964 respectively and live in Kaunas (Lithuania). They are a married couple. The case concerned the fairness of civil proceedings that they had been party to.

Between 2001 and 2009, the applicants were involved in protracted litigation brought against a company owned by Mrs Urbšienė, consisting of a claim for rent arrears brought by another company, and also bankruptcy proceedings. The proceedings involved a large number of hearings, judgments and appeals in various courts. On some occasions, the applicants were granted legal aid. However, on multiple occasions the applicants were denied legal aid, on the grounds that their cases were directly related to their commercial or independent professional activities.

The claim for rent arrears ended when the Court of Appeal found against the applicants in October 2009, following an oral hearing where none of the parties were present. The applicants were denied legal aid to make a cassation appeal. This meant that one could not be made, as under domestic law such appeals had to be submitted by a lawyer.

The applicants alleged that the decisions of the domestic courts had been unlawful, and brought proceedings against the State for damages. Among their allegations, they complained about not being granted legal aid. However, their claim was rejected by the Vilnius Regional Court, the Court of Appeal and eventually the Supreme Court, the last judgment being on 24 February 2015.

Relying in particular on Article 6 § 1 (right to a fair hearing and access to court), the applicants complained that they had been refused legal aid and that that refusal, based solely on the fact that they as individuals had been engaged in commercial activities, had notably limited their access to court. They also complained that they had not been properly notified of the Court of Appeal hearing in October 2009.

Violation of Article 6 § 1 - on account of the refusal of legal aid
No violation of Article 6 § 1 – on account of the lack of proper notification of a hearing before the appellate court

Just satisfaction: EUR 3,000 (non-pecuniary damage) and EUR 500 (costs and expenses)

Ustinova v. Russia (no. 7994/14)

The applicant, Anna Ustinova, is a national of Ukraine who was born in 1984. She moved to live in Russia at the beginning of 2000. The case concerned the authorities' decision to deny Ms Ustinova's re-entry to Russia because she was HIV positive.

Ms Ustinova met a Russian national in 2008 and they started living together in the Krasnodar Region. They married in 2012 and had a son who acquired Russian nationality from his father. Ms Ustinova's daughter from her previous marriage also moved in with them and attended a primary school in the region.

In March 2013 Ms Ustinova was denied re-entry to Russia after a visit to Ukraine with her two children, based on a decision issued by the Consumer Protection Authority (CPA) in June 2012. As a result, she was forced to stay in Ukraine with her daughter, while her eight-month-old son remained in the care of her husband in Russia. It subsequently transpired that the basis for the exclusion order issued by the CPA was that, during her pregnancy in 2012, Ms Ustinova had tested positive for HIV. Her husband challenged the exclusion decision on his wife's behalf before the Tsentralnyy District Court and the Krasnodar Regional Court, but both courts dismissed the claim and approved the assessment made by the CPA that Ms Ustinova's presence in Russia constituted a threat to public

health. His applications for a cassation review, addressed to the Krasnodar Regional Court and later to the Supreme Court, were also dismissed.

In March 2015, Ms Ustinova filed a petition with the Constitutional Court against the relevant migration laws. The court declared these laws incompatible with the Russian Constitution; it based its finding on the medical consensus that HIV did not pose a threat to public health. Relying on the new case-law of the Constitutional Court Ms Ustinova's husband requested the Tsentralnyy District Court to reconsider its previous judgment on the exclusion order; his request was however rejected. He subsequently filed an appeal with the Krasnodar Regional Court, and in October 2015 it ruled that the exclusion order was unlawful and directed the Krasnodar Office of the CPA to remedy Ms Ustinova's situation.

Although Ms Ustinova has since been able to re-enter Russia via the Belarus-Russia border as it has no controls, her name has not apparently been definitively deleted from the list of undesirable individuals maintained by the Border Control Service.

Relying in particular on Article 8 (right to respect for private and family life), Ms Ustinova complained about the exclusion order which had resulted in her separation from her family in Russia.

Violation of Article 8

Just satisfaction: EUR 15,000 (non-pecuniary damage) and EUR 500 (costs and expenses)

El Ghatet v. Switzerland (no. 56971/10)

The applicants, Saleh El Ghatet, and his son, Mohamed Saleh El Ghatet, are Egyptian nationals who were born in 1952 and 1990 respectively. Saleh El Ghatet is also a Swiss national and lives in Hausen (Switzerland); his son lives in Egypt. The case concerned the refusal of the Swiss authorities to permit their family reunification.

In 1997 Saleh El Ghatet left Egypt to seek asylum in Switzerland, leaving his son to be cared for by his mother. His application for asylum was rejected but, having married a Swiss national in March 1999, he obtained a residence permit and eventually Swiss nationality. His son first visited him in Switzerland in 2002 based on a three-month tourist visa. He was allowed to re-enter Switzerland one year later for family reunification. However, his father sent him back to Egypt in January 2005 due to conflict with his step-mother.

After separating from his Swiss wife, in March 2006 Saleh El Ghatet lodged another request for family reunification with his son for whom he had custody under Egyptian law. The migration authorities refused the request. In the ensuing court proceedings both the Federal Administrative Court (in April 2008) and the Federal Supreme Court (in July 2010) dismissed the applicants' appeals against the refusal to grant family reunification. They found in particular that the requirements for family reunification had not been met because the applicant's son, who had already turned 18 years, had closer ties to Egypt where he had lived and been cared for almost all his life by his mother and paternal grandmother. Furthermore, his father had not applied for family reunification immediately after arriving in Switzerland.

Relying on Article 8 (right to respect for private and family life), the applicants complained about the Swiss authorities' refusal of their request for family reunification.

Violation of Article 8

Just satisfaction: EUR 8,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses) to the applicants jointly

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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)

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.