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

Press Release
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Judgments of 9 February 2021

The European Court of Human Rights has today notified in writing 16 judgments[1]:

seven Chamber judgments are summarised below;

separate press releases have been issued for four other Chamber judgments in the cases of: *Xhoxhaj v. Albania* (application no. 15227/19), *N.Ç. v. Turkey* (no. 40591/11), *Ramazan Demir v. Turkey* (no. 68550/17), and *Sağdıç v. Turkey* (no. 9142/16);

five 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 (*).

Veronica Ciobanu v. the Republic of Moldova (application no. 69829/11)*

The applicant, Veronica Ciobanu, is a Moldovan national who was born in 1974 and lives in Strășeni (the Republic of Moldova).

The case concerned the drowning of the applicant's son while he had been staying at a holiday camp.

Relying in particular on Article 2 (right to life) of the European Convention on Human Rights, the applicant alleged a violation of her son's right to life on account of his drowning while staying at the holiday camp in Sulina (Romania) and of the ineffective investigation into his death.

Violation of Article 2 (investigation)

Just satisfaction: 12,000 euro (EUR) for non-pecuniary damage and EUR 2,000 for costs and expenses

Hasselbaink v. the Netherlands (no. 73329/16)

The applicant, Frederik Egbert Hasselbaink, is a Dutch national who was born in 1984 and lives in Vlaardingen (the Netherlands).

The case concerned the criminal proceedings against the applicant for a series of violent crimes.

On 31 March 2016 the applicant was arrested and placed in police custody on suspicion of hostage taking, illegal restraint and extortion. On 5 April 2016, the investigating judge ordered his placement in initial detention for 14 days. Mr Hasselbaink's detention was extended for 30 days three times. The applicant did not appeal against those decisions.

The trial proceedings against Mr Hasselbaink started on 7 July 2016 before the Rotterdam Regional Court. That day, his applications to lift or suspend his pre-trial detention were dismissed and proceedings were adjourned.

[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: http://www.coe.int/t/dghl/monitoring/execution - _blank

On 13 July 2016, Mr Hasselbaink lodged a fresh application with the Regional Court to lift or suspend his pre-trial detention. Referring to statements made before the investigating judge, he argued that everyone, apart from the victim, had stated that there had been no coercion or threats from the side of the applicant, only talk about a debt. Therefore, the serious suspicions and reasons which had led to the order for his pre-trial detention no longer existed. It took several weeks before the Regional Court examined the applicant's requests. Ultimately, they were dismissed and the applicant remained in pre-trial detention. Mr Hasselbaink's appeal against that decision was dismissed on 1 September 2016.

On the same day, the trial proceedings before the Regional Court were resumed and the applicant's pre-trial detention lifted as of 2 September 2016 because there was a serious prospect that the applicant would not be given a custodial sentence or that any custodial sentence imposed would be shorter than the pre-trial detention. However, it was not until 15 September 2016 that the applicant was actually released.

In its judgment of 15 September 2016, the Regional Court acquitted the applicant of all charges brought against him. On 13 April 2017, Mr Hasselbaink was also compensated for his pre-trial detention.

Relying in particular on Article 5 § 3 (right to liberty and security) of the European Convention, Mr Hasselbaink complained that the decisions taken by the Regional Court on 4 August 2016 and by the Court of Appeal on 1 September 2016 had lacked sufficient reasons to justify his continued detention. Under Article 5 § 4, he further complained of those domestic courts' lack of promptness in deciding his application to lift his pre-trial detention.

Violation of Article 5 § 3
Violation of Article 5 § 4

Just satisfaction: EUR 1,300 (non-pecuniary damage) and EUR 196 (costs and expenses)

Maassen v. the Netherlands (no. 10982/15)

The applicant, Marlon Maassen, is a Dutch national who was born in 1991. At the time of the introduction of the application, he was detained in Baarn (the Netherlands).

The case concerned the criminal proceedings against the applicant in connection with human trafficking and pimping.

In July 2014 the television programme *Undercover in Nederland* conducted an investigation into abuse in prostitution. Footage of someone helping a 15-year-old girl to sell sexual services on the Internet was passed on to the police. The ensuing criminal investigation resulted in a number of people, Mr Maassen among them, being suspected of human trafficking, particularly of exploiting an underage prostitute.

Mr Maassen was arrested and placed in police custody on 2 December 2014. Three days later, he was taken into initial detention on remand for 14 days by order of an investigating judge of the Central Netherlands Regional Court sitting in Utrecht. On 19 December 2014, his detention was extended for 90 days. The applicant's appeal against that decision was dismissed.

The trial proceedings against Mr Maassen started on 17 March 2015 before the Regional Court. It dismissed Mr Maassen's applications to lift or suspend his pre-trial detention and adjourned the proceedings until 9 June 2015. The Arnhem-Leeuwarden Court of Appeal upheld that decision following Mr Maassen's appeal against it. At the public trial hearing of 9 June 2015, the counsel for the applicant's request that his pre-trial detention be either lifted or suspended was once more dismissed.

In a judgment of 15 September 2015, the Regional Court convicted Mr Maassen of human-trafficking for having brought a 15-year-old girl into and profiting from her prostitution for a period of about three weeks. The applicant was sentenced to 18 months' imprisonment less the time spent in pre-trial detention and six months that were suspended pending a probation period of two years. This judgment became final on 29 September 2015.

Relying in particular on Article 5 § 3 (right to liberty and security) of the Convention, Mr Maassen complained that the respective decisions taken by the domestic courts had lacked sufficient reasons to justify his continued detention.

Violation of Article 5 § 3

Just satisfaction: EUR 1,600 for non-pecuniary damage.

Zohlandt v. the Netherlands (no. 69491/16)

The applicant, Ferdinand Gerardus Zohlandt, is a Dutch national who was born in 1961 and lives in Uden (the Netherlands).

The case concerned the criminal proceedings against the applicant in connection with a series of violent crimes.

After a criminal complaint was lodged against Mr Zohlandt for attempted murder, aggravated assault and destruction of property, he was arrested and placed in police custody on suspicion of attempted premeditated aggravated assault and illegal possession of a firearm, ammunition and a knuckleduster. On 16 June 2016, he was taken into initial detention on remand for 14 days by order of an investigating judge of the Oost-Brabant Regional Court.

In two separate decisions taken on 29 June 2016, the Regional Court dismissed Mr Zohlandt's request to suspend his pre-trial detention and decided to extend it for 90 days.

On 29 July 2016, Mr Zohlandt lodged a new application for his release or the suspension of his pre-trial detention, which was dismissed by the Regional Court on 3 August 2016. The Court of Appeal dismissed Mr Zohlandt's appeal on 18 August 2016 and upheld the impugned decision.

On 23 September 2016, the trial started in the Regional Court. Mr Zohlandt's pre-trial detention was suspended, with a restraining order being issued, and the proceedings were adjourned.

In a judgment of 3 March 2017, Mr Zohlandt was convicted of attempted premeditated aggravated assault and several offences under the Weapons and Ammunition Act and sentenced to ten months' imprisonment less the time spent in pre-trial detention.

Relying in particular on Article 5 § 3 (right to liberty and security) of the Convention, the applicant complained that the Court of Appeals' decision of 18 August 2016 had lacked sufficient reasons to justify his continued detention.

Violation of Article 5 § 3

Just satisfaction: The applicant did not submit any claims for just satisfaction.

Laptev v. Russia (no. 36480/13)

The applicant, Oleg Anatolyevich Laptev, is a Russian national who was born in 1982 and lives in the village of Yubileynyy, in the Medvedovskiy District of the Republic of Mariy El (Russia).

The case concerned the applicant's complaints about the events surrounding the death of his brother in custody and the quality of the subsequent domestic investigation into the matter.

On 4 January 2011, the applicant's brother, Sergey Laptev, who at the time worked as a policeman, was arrested on suspicion of rape and detained in a temporary detention centre pending criminal proceedings. He was placed in a cell with Ch., an undercover police agent who was posing as a suspect in another criminal case. According to the applicant, Ch. may have had the task of convincing or coercing his brother to confess.

The applicant also alleges that on 5 January, when Sergey Laptev had two interviews with an investigator, one of which was conducted in the presence of his lawyer, he complained of the pressure exerted on him by the police to make him confess, including the threat that they would arrange for him to be raped by other inmates.

At 6.40 a.m. on 6 January, Sergey Laptev was found dead in his cell by three guards. The autopsy report compiled on the same day established mechanical asphyxiation as the cause of death.

On 7 January, the detention centre, acting of its own motion, conducted an internal investigation into the death. Camera footage showed that no guards had been present between 3.19 a.m. and 6.10 a.m. on the night of 6 January. Various measures were taken against the guards and their superiors for this breach of security.

In parallel, a preliminary inquiry into the events, instituted by a local branch of the Investigative Committee of Russia, concluded on 4 July 2011 that Sergey Laptev's death had been suicide and that the injuries detected on his body during the autopsy had resulted from a proportionate use of physical force during his arrest. The applicant appealed against that decision in court, pointing to various inconsistencies in the statements of the officials and the conclusions and deploring the decision's overall poor quality.

On 19 April 2012, the Yoshkar Ola Town Court allowed the applicant's appeal and quashed the decision of 4 July 2011. The Yoshkar Ola Supreme Court confirmed the Town Court's decision on appeal.

Ultimately, however, the investigation into the events was recommenced, leading to the version of events set out in the decision of 4 July 2011. The authorities admitted shortcomings in the supervision of Sergey Laptev, notably in respect of the security breach, but dismissed any allegations of exerting pressure on him and insisted that his death had been suicide and had been unrelated to these shortcomings.

The investigation was discontinued on 25 October 2012. That decision was upheld by the Town Court of Yoshkar Ola at first instance and on appeal.

Relying on Article 2 (right to life) of the Convention, the applicant complained that the State had failed to protect the deceased's life and that the ensuing investigation into his death had not been effective.

Violation of Article 2 (investigation)
Violation of Article 2 (right to life)

Just satisfaction: EUR 23,000 (non-pecuniary damage) and EUR 3,430 (costs and expenses)

Société Anonyme Ahmet Nihat Özsan v. Turkey (no. 62318/09)*

The applicant, Ahmet Nihat Özsan A.Ş., is a public limited company operating in the construction sector, with its registered office in Istanbul.

The case concerned an alleged inconsistency in the case-law of the Court of Cassation on the subject of additional damage as governed by Article 105 of the Code of Obligations.

Relying in particular on Article 6 § 1 (right to a fair hearing), the applicant company alleged a lack of consistency in the practice of the courts and the case-law of the Court of Cassation regarding the conditions for the application of Article 105 of the Code of Obligations.

Violation of Article 6 § 1

Just satisfaction: The Court rejected the applicant company's request for just satisfaction.

Tokel v. Turkey (no. 23662/08)

The applicant, Mustafa Tokel, is a Turkish national who was born in 1940 and lives in Trabzon (Turkey).

The case concerned the allegedly unauthorised use of the applicant's patented invention – a conveyor-belt system for drying tea – by Caykur, the Directorate General of Tea Enterprises, a State-owned company.

In July 1991, Mr Tokel applied to have his conveyor-belt system certified as his invention. He obtained it in August 1992. In the meantime, in May and June 1991 Caykur installed the same system in one of its factories and made a five-year plan to install it in twenty-five more factories. The Council of Ministers approved Çaykur's investment plan in October 1991, that is to say, following the applicant's patent application.

In March 1993, Caykur brought an action in the Trabzon Civil Court of General Jurisdiction requesting the annulment of the applicant's certificate of invention. It mainly argued that the system was its own original project, thus the applicant had taken copies of Caykur's project, exploiting his contacts among Caykur's staff. The action was dismissed by the Civil Court in May 1994 on the basis of two expert reports finding that the invention had been devised by Mr Tokel. Following an appeal by Caykur, the Court of Cassation quashed that judgment in January 1995, holding that the first-instance court had to obtain another expert report establishing whether the invention satisfied the novelty requirement.

The new expert reports confirmed that the applicant's invention satisfied the aforementioned requirement and the Civil Court once again dismissed Caykur's action in March 2001. The Court of Cassation upheld that decision in November 2001 and rejected a request lodged by Caykur for rectification of that decision in March 2002.

In a second set of proceedings in 2002, Mr Tokel brought an action before the local civil court claiming compensation and requesting the suspension of Caykur's use of his invention in eight of its factories. He argued that Caykur had used his patented invention in its factories without his permission, given that despite the final judgment in the proceedings brought by Caykur, the company had gone on to use his patented invention unlawfully without making any payment to him.

The question of whether Caykur's use of the system at issue constituted prior use was examined and answered by experts. Indeed, Caykur had started using the system in May 1991, two months before the applicant had applied for the certificate of invention. The experts' report concluded that Caykur's use of the system fell within the limits of the reasonable needs of the company and therefore constituted prior use. Before the Civil Court Mr Tokel argued that, assuming that the other conditions for prior use had been satisfied, Caykur's right to prior use concerned only the first factory it had installed the system in. The Civil Court dismissed the applicant's action in October 2005. The Court of Cassation upheld that judgment in May 2007, stating that Caykur's use of the invention could not be restricted to one factory as it was a State-owned enterprise whose investment plans had been approved by the Council of Ministers. The Court of Cassation rejected a request lodged by the applicant for the rectification of that judgment in December of that same year.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained of a violation of his right to peaceful enjoyment of his possessions.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 2,000 for costs and expenses.

The Court considered that it did not have sufficient information to objectively determine the applicants' pecuniary loss in the present case.

It furthermore noted that by virtue of Presidential Decree no. 809 the Turkish Compensation Commission now had authority to examine just satisfaction claims in applications where the Court had found a violation of Article of Protocol No. 1 but had not ruled on the applicants' claims for just satisfaction under Article 41 of the Convention or had decided to reserve the question.

The Court therefore decided to strike out the part of the case regarding the applicants' claim in respect of pecuniary damage under Article 41 of the Convention out of its list of cases.

Press contacts
During the current public-health crisis, journalists can continue to contact the Press Unit via echrpress@echr.coe.int.

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