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

Press Release
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ECHR 004 (2017)
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Judgments of 10 January 2017

The European Court of Human Rights has today notified in writing 15 judgments[1]:

sx Chamber judgments are summarised below; for three others, in the cases of *Kacper Nowakowski v. Poland* (application no. 32407/13), *Ioniță v. Romania* (no. 81270/12), and *Osmanoglu and Kocabas v. Switzerland* (no. 29086/12), separate press releases have been issued.

six 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 / decisions in French below are indicated with an asterisk (*).

Babiarz v. Poland (application no. 1955/10)

The applicant, Artur Babiarz, is a Polish national who was born in 1971 and lives in Dębowa Kłoda. The case concerned the Polish authorities' refusal to grant Mr Babiarz a divorce. He complained that this breached his right to marry his current partner, who is the mother of his child.

Mr Babiarz married R. in 1997. In autumn 2004, he met his current partner. In January 2005, he moved out of the flat he shared with R. and began living with his current partner, who gave birth to their daughter in October 2005. On 25 September 2006, Mr Babiarz filed a petition for a no-fault divorce. R. did not agree to the divorce, declared that she loved Mr Babiarz, and asked the court to dismiss the divorce petition. Mr Babiarz then requested a divorce on fault-based grounds.

Throughout the proceedings, R. maintained her refusal to divorce. A number of hearings were held during which 13 witnesses were heard, including family and colleagues. On 17 February 2009, the Lublin Regional Court refused to grant the divorce to Mr Babiarz. The court held that he was the only one responsible for the breakdown of the marriage, due to his infidelity. The court emphasised that, under Article 56 § 3 of the Family and Guardianship Code, a divorce cannot be granted if it has been requested by the party who was at fault for the marital breakdown and if the other spouse refuses to consent. It further noted that that there was no indication that R. was acting out of hatred or vengeance by withholding her consent to divorce as she had repeatedly expressed her desire to reconcile with him.

Mr Babiarz appealed against the judgment. He argued in particular that the court had erred in holding that a spouse's refusal to consent to divorce could be disregarded only when it was abusive or dictated by hostility towards the spouse seeking the divorce. Mr Babiarz contended that the court should have examined the negative consequences caused by continuing the formal existence of a failed marriage. On 16 June 2009, the Lublin Court of Appeal dismissed Mr Babiarz's appeal.

Relying on Article 8 (right to respect for private and family) and Article 12 (right to marry) of the European Convention on Human Rights, Mr Babiarz argued that by refusing to grant him a divorce, the courts had prevented him from marrying his partner.

[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

No violation of Article 8
No violation of Article 12

Korzeniak v. Poland (no. 56134/08)

The applicant, Stanisław Korzeniak, is a Polish national who was born in 1953 and lives in Krosno (Poland).

In the late 1990s, Mr Korzeniak carried out construction work for a Polish company in Germany. In July 1999, he lodged a civil claim against his former employer, claiming that he should have been paid a higher hourly rate for his work. For almost nine years, the proceedings passed between multiple levels of the Polish court system, until the final judgment was given by the Supreme Court on 14 May 2008. Mr Korzeniak was only partially successful in his claim.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) of the European Convention, Mr Korzeniak complained in particular that the Supreme Court that heard the final appeal had not been impartial, on the grounds that one of the judges hearing the case had already passed judgment in the proceedings at an earlier stage, when he had been sitting in the Court of Appeal (prior to that judge's promotion to the Supreme Court).

Violation of Article 6 § 1 (impartial tribunal)

Just satisfaction: 3,300 euros (EUR) (non-pecuniary damage)

Mečiar and Others v. Slovakia (no. 62864/09)
Riedel and Others v. Slovakia (nos. 44218/07, 54831/07, 33176/08, and 47150/08)

Both cases concerned the rent-control system in Slovakia.

The applicants in both cases are: 31 Slovak nationals, who live/d in Bratislava, Bánovce, Bebravou, Brezová, Košice and Trenčín (all in Slovakia); two limited liability companies, based in Bratislava; and one religious association, also based in Bratislava. Three of the applicants are now deceased and have been replaced in the proceedings before the Court by their heirs.

The applicants are/were all owners or co-owners of flats that were or still are subject to rent control. On obtaining ownership of the flats, under the relevant legislation, they had to accept that they had to let their flats to tenants while charging no more than the maximum amount of rent fixed by the State; and that they could not terminate the leases, or sell the flats other than to the tenants.

It is in dispute what amount of rent the applicants would be able to receive by letting their flats under free-market conditions and, by extension, what proportion of the market rent the regulated rent represents. In particular, the Government submitted an expert opinion, according to which the regulated rent of the flats possessed by the applicants corresponded to some 14-26% of the market rent in 2010. The applicants, relying on different sources of information – expert opinions, data from the National Association of Real Estate Agencies and information on average rental prices in the press – argued that the regulated rent was disproportionately low compared with similar flats to which the rent-control did not apply. In one application (no. 54831/07), for example, the data suggested that the regulated rent represented some 5-13% of the market rent for comparable flats in the area.

The applicants complained, inter alia, that the rent-control scheme had breached their property rights. They argued in particular that the regulated rent for their flats had been substantially lower than free-market prices for similar flats in the same areas and that they had thus been forced to satisfy the housing needs of other people at their own expense. Moreover, they contended that

legislation which had allowed for increases in regulated rent by 20% each year since 2011 had not been sufficient to close the gap between the regulated and the market rent and, in any case, had not addressed the breach of their rights before its enactment. They relied in particular on Article 1 of Protocol No. 1 (protection of property).

There are currently 14 similar applications involving some 200 applicants pending before the Court.

- case of ***Mečiar and Others***:

Inadmissible – to the extent that it concerned the application of the rent-control scheme to the flats indicated in Appendix 2 to the judgment
Violation of Article 1 of Protocol No. 1 – to the extent that it concerned the application of the rent-control scheme to the other flats

Just satisfaction: EUR 1,645,300 for pecuniary and non-pecuniary damage (for full details of the sums allocated to the different applicants, see Appendix 3 to the judgment) and EUR 61,574.36 for costs and expenses to the applicants jointly.

- case of ***Riedel and Others***:

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 221,700 for pecuniary and non-pecuniary damage (for full details of the sums allocated to the different applicants, see Appendix 6 to the judgment) and EUR 2,700 jointly to the applicants in application no. 54831/07, EUR 1,100 jointly to the applicants in application no. 47150/08, and EUR 2,863.63 jointly to the applicants in application no. 44218/07 for costs and expenses.

Aparicio Navarro Reverter and García San Miguel y Orueta v. Spain (no. 39433/11)*

The applicants, Alberto Aparicio Navarro-Reverter and Ana María García San Miguel y Orueta, are Spanish nationals who were born in 1937 and 1942 respectively and live in Madrid.

The case concerned the failure to notify the owners of an apartment of administrative proceedings concerning the lawfulness of a building permit.

In September 2001 Mr Aparicio Navarro Reverter and Ms García San Miguel y Orueta purchased an apartment in Sanxenxo (Galicia). In July 2002 one of the neighbours applied to the administrative courts challenging the lawfulness of the construction work on the apartment block and requesting that it be suspended. The municipal authorities informed only the site developer, who was the sole holder of the building permit, about the proceedings; the applicants were not notified.

In January 2004 the Pontevedra administrative judge no. 3 partly allowed the neighbour's claims and annulled the building permit, without however ordering that the apartments be demolished. The buyers were not notified of that judgment. On appeal, the Galicia High Court of Justice ordered the demolition of several apartments. At the neighbour's request the necessary measures were taken to enforce the judgment. The municipal authorities and the site developer appealed against those measures, without success, and the final judgment was served on the applicants in February 2009 by the municipal authorities, who informed them that the building permit granted to the developer had been annulled and that an order had been made for the demolition of several apartments, including theirs.

In March 2009 Mr Aparicio Navarro Reverter and Ms García San Miguel y Orueta applied unsuccessfully to the Galicia High Court of Justice to have the proceedings declared null and void. They also lodged an *amparo* appeal with the Constitutional Court, arguing that no steps had been

taken to inform them of the proceedings. The Constitutional Court declared their appeal inadmissible. The demolition work is currently suspended and proceedings are in progress for regularisation of the original building permit.

Relying in particular on Article 6 § 1 (right to a fair hearing), the applicants complained that they had not been informed, as interested parties, of the proceedings before the Pontevedra administrative judge no. 3.

Violation of Article 6 § 1

Just satisfaction: EUR 1,000 to each applicant for non-pecuniary damage and EUR 33,446.66 jointly to the applicants for costs and expenses

Salija v. Switzerland (no. 55470/10)

The applicant, Bljerim Salija, is a Macedonian national, who was born in 1980 in the municipality of Tetovo ("the former Yugoslav Republic of Macedonia"). The case concerned the revocation of his permanent residence permit in Switzerland and his expulsion.

Mr Salija arrived in Switzerland in 1989 aged nine to be reunited with his family and was granted a permanent residence permit. In 1999 he married a Macedonian national who also held a permanent residence permit in Switzerland. The couple have two children together.

Following two criminal convictions for embezzlement (in 2003) and for homicide (in 2004), Mr Salija had expulsion proceedings brought against him, the migration authorities revoking his permanent residence permit and ordering his removal. The expulsion order was served in July 2009, shortly before Mr Salija's release on parole after having served a third of his five-year-and-three-month prison sentence for homicide.

All of his appeals before the domestic courts, ultimately to the Federal Supreme Court in July 2010, were dismissed. The courts notably took into account the gravity of his offences, that he was not well integrated in Switzerland, that he spoke Albanian and that he was familiar with the culture in "the former Yugoslav Republic of Macedonia" where he had spent parts of his childhood and which he had visited since. Moreover, his wife, who was also a national of "the former Yugoslav Republic of Macedonia" and knew Albanian as well the country's culture, and his children, who were of an adaptable age, could reasonably be expected to relocate.

In October 2010 Mr Salija left Switzerland for "the former Yugoslav Republic of Macedonia" in order to comply with the expulsion order. His family joined him there in December 2010. The family has since returned to Switzerland (in 2015) and live in Zurich.

Relying on Article 8 (right to respect for private and family life), Mr Salija complained about the revocation of his residence permit and his expulsion, arguing that he had had no close ties with "the former Yugoslav Republic of Macedonia" whereas he had arrived in Switzerland as a child, had lived there for more than 20 years, marrying and raising two children.

No violation of Article 8

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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.