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

Press Release
issued by the Registrar of the Court

ECHR 318 (2015)
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Judgments of 13 October 2015

The European Court of Human Rights has today notified in writing 13 Chamber judgments[1]:

11 judgments are summarised below; for two others, in the cases of *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina (application no. 17224/11)* and *Bremner v. Turkey (no. 37428/06)*, separate press releases have been issued.

The judgments in French below are indicated with an asterisk (*).

Riza and Others v. Bulgaria (nos. 48555/10 and 48377/10)*

The applicants are Rushen Mehmed Riza, a Bulgarian national, Dvizhenie za Prava i Svobodi (the Movement for rights and freedoms – "DPS"), a Bulgarian political party, and 101 Bulgarian nationals of Turkish origin and/or of the Muslim faith who exercised their right to vote in 17 polling stations in Turkey where the results of the Bulgarian general elections in July 2009 were subsequently declared null and void.

The case concerned respect for the right to stand for election and the right to vote.

On 5 July 2009 parliamentary elections were held. Bulgarian citizens living abroad were entitled to vote only for parties and coalitions and their votes were taken into account in the distribution of seats between political formations at national level. The DPS was registered as a participant in the elections. When the results were counted, six parties and coalitions exceeded the threshold of 4% of votes cast and were included in the proportional distribution of seats in the National Assembly, with the DPS obtaining 14.45% of valid votes, giving it the position of third political party in the country. It was the clear winner in 17 polling stations opened in Turkey where the applicants had voted. On 7 July 2009 the electoral board attributed the DPS 33 seats in accordance with the proportional representation system. The attribution was partly amended following an appeal to the Constitutional Court by another political formation.

On 21 July 2009 the chairman and three members of the political party RZS (Red, Zakonnost, Spravedlivost – "the Party of Order, Legality and Justice"), asked the Principal Public Prosecutor to submit an appeal to the Constitutional Court for the annulment of the election of seven DPS MPs on account of a number of anomalies which had occurred in the polling stations in Turkey. On 16 February 2010 the Constitutional Court gave its judgment. It rejected the request for the annulment of the election of seven MPs, but decided to deduct from the results obtained by each political party all the votes obtained in 23 polling stations in Turkey, i.e. 18,140 votes for the DPS. It declared that the votes in question were valid under domestic law but had to be deducted from the election results on account of anomalies in the electoral rolls and in the ballot reports. Appeals by Mr Riza and the DPS were declared inadmissible.

Relying in particular on Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights, Mr Riza and the DPS alleged that the annulment of the election results

[1] Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a 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 23 polling stations in Turkey had unjustifiably interfered with their right to stand for election and the other applicants alleged that the annulment of their ballot papers had constituted a violation of their active electoral rights.

Violation of Article 3 of Protocol No. 1 – concerning the right to stand for election of Mr Riza and the DPS
Violation of Article 3 of Protocol No. 1 – concerning the right to vote of the 101 other applicants

Just satisfaction: The Court held that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage sustained by by Mr Reza whose right to stand for election had been violated and the 101 applicants whose right to vote had been violated. It further awarded 6,000 euros (EUR) jointly to these 101 applicants and the DPS in respect of costs and expenses.

Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria (no. 3503/08)

The applicant company, Ünsped Paket Servisi SaN. Ve TiC. A.Ş., is a Turkish logistic services company.

The case concerned the confiscation of a lorry belonging to the applicant company in criminal proceedings to which it had not been a party.

On 23 June 2007 a lorry belonging to the applicant company, was stopped for inspection at the Yambol customs post (Bulgaria). The Bulgarian authorities discovered and seized a quantity of drugs with an estimated value of 27,000 euros (EUR). Criminal proceedings were opened against the driver of the lorry and the lorry was seized as material evidence.

On 26 June 2007 the applicant company asked the Prosecutor for the return of the lorry. This was refused on the basis that it had to be retained as material evidence until the end of the criminal proceedings. On 3 August 2007 the applicant company renewed its request for the return of the lorry arguing, amongst other things, that the holding of the lorry was no longer justified as a forensic report had already been prepared and the value of the lorry (EUR 83,000) was over three times the value of the drugs seized. Meanwhile, the lorry driver agreed to a plea bargain with the prosecutor; the terms of the plea bargain included the forfeiture of the lorry. On 8 August 2007 the applicant company asked the criminal court not to confiscate its lorry, again arguing that the value of the lorry was three times higher than the value of the smuggled goods and as such, and in accordance with national law, should not be forfeited. However, the plea bargain agreed between the driver and the Prosecutor was accepted by the court on 14 August 2007 and the applicant company's lorry was forfeited.

On 26 May 2008 the company brought proceedings in Turkey against the lorry driver, seeking damages. The driver was found liable to pay the company for the damage his actions had caused but the company could not collect any of the compensation awarded as the lorry driver had no assets.

Ünsped Paket Servisi SaN. Ve TiC. A.Ş. complained, in particular, that the confiscation of its lorry in proceedings in which it had not been a party had breached its property rights under Article 1 of Protocol No. 1 (protection of property) to the European Convention.

Violation of Article 1 of Protocol No. 1

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

Jović v. Croatia (no. 45593/13)
V.R. v. Croatia (no. 55102/13)

The applicants are Čedo Jović, a Serbian national who was born in 1963 and lives in Belgrade (Serbia) and Mr V.R., a Croatian national who was born in 1992.

Both cases concerned their complaints about the lack of effective judicial review of their pre-trial detention by the Constitutional Court.

In the first case, Mr Jović was arrested in July 2008 on suspicion of war crimes against the civilian population and placed in pre-trial detention. His detention was subsequently extended on a number of occasions by the County Court and the Supreme Court pending his trial and then a retrial. He was ultimately found guilty by the County Court on 1 June 2012 and sentenced to five years' imprisonment, his pre-trial detention being further extended until this judgment became final. In the meantime in April 2012, Mr Jović had challenged his continued pre-trial detention before the Constitutional Court. However, this constitutional complaint was dismissed in January 2013 on the grounds that a fresh decision extending his detention had been adopted in the meantime on 1 June 2012.

In the second case, Mr V.R. was also placed in pre-trial detention, following his arrest on suspicion of sexual abuse and indecent behaviour towards children. His detention was subsequently extended on two occasions in June 2013 and then on 8 July 2013 when Mr V.R. was indicted by the municipal criminal court. Mr V.R. had in the meantime lodged a complaint with the Constitutional Court to challenge his continued pre-trial detention. His constitutional complaint was dismissed on 10 July 2013 on the ground that a fresh decision extending his detention had been adopted on 8 July 2013. Ultimately, on 22 July 2013, the municipal court re-examined the reasons for his pre-trial detention and ordered his release.

Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), the applicants alleged that the Constitutional Court's practice of declaring a complaint before it inadmissible merely because a new decision on detention had in the meantime been adopted had deprived the pre-trial detention review procedure of all meaning.

Violation of Article 5 § 4 – in both cases

Just satisfaction: EUR 1,000 each to Mr Jović and Mr V.R. (non-pecuniary damage), and EUR 2,500 to Mr Jović and EUR 3,300 to Mr V.R. (costs and expenses)

Vrountou v. Cyprus (no. 33631/06)

The applicant, Maria Vrountou, is a Cypriot national who was born in 1980 and lives in Kokkinotrimithia (Cyprus).

The case concerned the failure to grant Ms Vrountou a refugee card.

In 1974 the Council of Ministers of the Republic of Cyprus approved the introduction of a scheme for war victims and persons displaced from areas occupied by the Turkish armed forces or evacuated to meet the needs of the National Guard. Under the scheme, displaced persons were entitled to refugee cards, which made them eligible to a range of benefits including housing assistance. In February 2003 Ms Vrountou applied to the migration authorities for a refugee card in respect of occupied Skylloura, the place from which her mother had been displaced. Her request was rejected in March 2003 on the basis that she could not be considered a displaced person because, while her mother was a displaced person, her father was not.

In the ensuing judicial proceedings before the Supreme Court, Ms Vrountou's recourse was dismissed at first instance in May 2004 because it was not possible to extend the applicable criteria for granting refugees cards so as to cover the children of displaced women. Notably a proposal to change the law had been placed before the House of Representatives' Committee for Refugees but never approved. The Supreme Court upheld these findings on appeal in March 2006, considering that it did not have jurisdiction to extend the refugee card scheme.

Ms Vrountou complained about the refusal of the authorities to grant her a refugee card, alleging that this had meant that she had been denied a range of benefits, including housing assistance. She also alleged that denying her a refugee card on the basis that she had been the child of a displaced woman rather than a displaced man had been discriminatory on the grounds of sex and that no authority in Cyprus, including the courts, had examined the merits of her complaint. She relied in particular on Article 1 of Protocol No. 1 (protection of property), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

Violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1
Violation of Article 13

Just satisfaction: EUR 29,000 (pecuniary damage), EUR 4,000 (non-pecuniary damage) and EUR 6,981 (costs and expenses)

Haász and Szabó v. Hungary (nos. 11327/14 and 11613/14)

The applicants, Éva Haász and Gabriella Szabó, are Hungarian nationals who were born in 1981 and 1995 and who live in Siófok and Lepsény respectively (both in Hungary).

The case concerned the use of excessive, potentially lethal force against the applicants by an off-duty police officer and the subsequent investigation into the incident by the domestic authorities.

On 6 August 2012, Ms Haász and Ms Szabó, returning from an excursion to Lake Balaton, decided to spend the night in their car, a Fiat Punto, in the parking lot of a private house in the village of Tagyon (Hungary). During the night a volunteer law enforcer was tipped off about a Fiat Punto driving suspiciously around the village. He then informed an off-duty police officer and together they went in search of the Fiat Punto. They noticed the vehicle in a driveway and stopped about a metre away. Both men got out of their vehicle and started to run towards the car. Ms Haász, frightened when seeing two people in civilian clothes running towards her, attempted to drive away. The police officer waved at the car shouting “Police! Stop!” and fired a warning shot. He then shot twice more at the car, the second shot narrowly missing Ms Szabó’s head. The officer eventually put his gun away and presented his police ID at which point it became clear that the incident was based on a misunderstanding.

A criminal investigation was opened by the Prosecutor’s Office. Ms Haász and Ms Szabó were questioned, other witnesses were heard and the opinion of a forensic firearms expert was obtained. At the same time, the police officer’s superior, investigating the officer’s use of his firearm, concluded that while he had no intention of endangering life, his actions had been unprofessional. On 13 July 2013, the Prosecutors Office discontinued the investigation finding that the police officer’s use of his firearm had been lawful in face of the danger represented by the car driving towards him and accepting the officer’s account that he had fired the shots because he had believed there was a danger to his colleague’s life. Ms Haász and Ms Szabó filed a complaint against the discontinuation which was dismissed. This decision was served on them on 29 July 2013.

Relying on Article 2 (right to life), Ms Haász and Ms Szabó complained that excessive force had been used against them in circumstances where it had not been absolutely necessary, putting their lives at risk. Furthermore, they alleged that the authorities’ investigation into the incident had been inadequate, arguing in particular that it had not been clarified whether the force had been absolutely necessary in the circumstances.

Violation of Article 2 (right to life + investigation) – in respect of Ms Haász (the Court further declared Ms Szabó’s application inadmissible)

Just satisfaction: EUR 15,000 (non-pecuniary damage) and EUR 5,053 (costs and expenses) to Ms Haász

Baratta v. Italy (no. 28263/09)*

The applicant, Mario Baratta, is an Italian national who was born in 1951 and lives in Cosenza (Italy).

The case concerned the trial of Mr Baratta, who had been charged with offences including homicide and conspiracy and who had been tried in his absence in Italy, having been declared as "eluding arrest", when he had actually been detained pending extradition in Brazil.

Mr Baratta's lawyer asked for the decision to try him in his absence to be rescinded. The domestic courts found that, as he was challenging his extradition, his absence was the result of his own will and not of a legitimate impediment. Mr Baratta was sentenced to life imprisonment.

When Mr Baratta was extradited from Brazil to Italy in April 2001, he applied for a stay of execution, alleging that his detention pending extradition had been incompatible with a finding that he was "eluding arrest", seeking the possibility of appealing against the first-instance judgment sentencing him to life imprisonment, even though his lawyer had already exhausted domestic remedies. The court dismissed Mr Baratta's application, finding that the decision to try him in his absence had already become final.

Mr Baratta then sought a ruling to re-open the limitation period. The Court of Cassation decided to grant a new time-limit within which he could appeal against his life sentence, observing that Mr Baratta had been wrongly declared as "eluding arrest" when he was actually detained in Brazil. Mr Baratta thus appealed against his life sentence and his conviction was declared null and void in June 2012 on account of the absolute nullity of the proceedings; his detention abroad was to be regarded as a legitimate impediment, even when he was challenging his extradition.

Following that decision, the first-instance proceedings were re-opened and the Assize Court decided to discontinue them on the ground that the charges had become time-barred. The public prosecutor appealed and the appeal proceedings are still pending.

Relying in particular on Article 5 (right to liberty and security), the applicant contended that his detention for the enforcement of his sentence had been arbitrary.

Violation of Article 5 § 1

Just satisfaction: The Court held that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary prejudice damage sustained by Mr Baratta. It further awarded him EUR 5,000 in respect of costs and expenses.

S.H. v. Italy (no. 52557/14)*

The applicant, S.H., is an Italian national who was born in 1984 and lives in Sacile (Italy). She is the mother of three children, R., P. and J., who were born respectively in 2005, 2006 and 2008.

The case concerned the declaration of adoptability of the children of S.H. on account of difficulties encountered by the parents, despite their wish to continue looking after them with the help of the social services.

In August 2009 the social services informed the domestic court that, on a number of occasions, the children had been admitted to hospital following the accidental ingestion of medication. Urgent proceedings were opened. The court ordered the removal of the children from their family and their placement in an institution.

The parents acknowledged that on account of S.H.'s depression, they had had difficulties looking after the children, but said that they could look after them with the help of the social services. A psychiatrist proposed the return of the children to their parents with home help, a solution that the court accepted.

The children were, however, removed again from the family, on the ground that S.H. had been admitted to hospital and the father had left the family home. The public prosecutor applied for the opening of a procedure to declare the children adoptable. The parents stated that the children's father was available to look after them and that, consequently, they had not been abandoned. The court ordered an expert's report. The expert proposed that the children's placement in an institution be maintained. The court, however, declared the children adoptable.

The parents lodged an appeal against that decision. In July 2011 the children were, however, placed in a foster family and the appeal court confirmed their adoptability, on account of the parents' incapacity to exercise their parental role in spite of the help of the competent authorities. The parents appealed, in vain, to the Court of Cassation.

S.H. asked the court to revoke the declaration of adoptability, but the court dismissed her request.

Relying on Article 8 (right to respect for private and family life), the applicant alleged that the domestic authorities had failed in their positive obligation to use all the necessary efforts to preserve the parent-child relationship. She complained that they had declared her children adoptable when there had been no abandonment, only transitory family difficulties.

Violation of Article 8

Just satisfaction: EUR 32,000 (non-pecuniary damage)

Manea v. Romania (no. 77638/12)*

The applicant, Constantin Manea, is a Romanian national who was born in 1975 and is currently in Bacău prison serving a sentence for attempted murder and conspiracy.

The case concerned Mr Manea's allegation about poor conditions of detention and of prison visits.

Mr Manea claims that since May 2011 he has had to share cells of 30 to 35 sq.m with about 20 prisoners, the vast majority of whom are smokers. He says that hot water is available only twice a week and that the cells have only one shower cubicle. The mattresses are infested with fleas and the meals are served on the beds, as there are no tables in the cells. His two-hour daily exercise is confined to a 50 sq.m rat-infested courtyard, with 40 to 50 other prisoners at the same time. Because of the humidity, cigarette smoke and dust, Mr Manea is suffering from lung problems.

The Government argue that the cells have windows, electric ventilation and hearing, together with a bathroom fitted with a number of basins, toilets and showers. The cleanliness of the cells is the responsibility of the prisoners. In their submission, Mr Manea has never asked to be moved to a non-smoking cell.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Manea complained about the conditions of his detention in Bacău prison.

Violation of Article 3

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 480 (costs and expenses)

Miclea v. Romania (no. 69582/12)

The applicant, Alexandru Miclea, is a Romanian national who was born in 1989 and who lives in Arad (Romania).

The case concerned the alleged ill-treatment of Mr Miclea in police custody and the lack of an effective investigation into his complaint of this ill-treatment.

On 8 August 2010, Mr Miclea was involved in a fight outside a bar. He was then taken by the police to the police station to provide a statement. Mr Miclea alleges that once at the station, he was handcuffed to a radiator and punched and kicked by officers.

On 15 September 2010, Mr Miclea lodged a complaint against the two officers whom he alleged had assaulted him. Soon after Mr Miclea made a statement to the Prosecutor and submitted a forensic medical certificate, dated 9 August 2010, showing in particular injuries to both his wrists. Statements from witnesses corroborating his account were taken in February 2011. In June 2011 witness statements were taken from the two police officers who denied any wrongdoing and alleged that Mr Miclea's injuries had been sustained during the fight outside the bar. In January 2012 the Prosecutor's Office decided not to pursue criminal proceedings against the officers on the basis that their statements contradicted those of Mr Miclea and his witnesses. Mr Miclea contested this decision before the court complaining, in particular, that the prosecutor had overlooked important evidence. His case was ultimately dismissed.

Relying in essence on Article 3 (prohibition of inhuman or degrading treatment), Mr Miclea complained that he had been ill-treated in police custody and, furthermore, that the authorities had been ineffective in clarifying the circumstances in which he had been physically assaulted.

Violation of Article 3 (investigation)
No violation of Article 3 (treatment)

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 360 (costs and expenses)

Akkoyunlu v. Turkey (no. 7505/06)

The applicant, Hayrullah Akkoyunlu, is a Turkish national who was born in 1981 and lives in Istanbul.

The case concerned Mr Akkoyunlu's allegation that he had lost the sight in his left eye during his military service due to delays in access to medical care.

Mr Akkoyunlu, who had recently started his compulsory military service in Şırnak, went to the infirmary of his regiment on 25 July 2001, complaining of severe pain in his left eye. According to Mr Akkoyunlu, the military doctor was absent and he was seen by a soldier who sent him away with eye drops. The Government dispute this allegation, stating that Mr Akkoyunlu had in fact been examined by a military doctor. Having then gone once more to the infirmary and told to rest in his dormitory, he was eventually referred to hospital on 2 August 2001. Diagnosed with a corneal ulcer, he started treatment but completely lost the sight in his left eye. He was deemed no longer medically fit for military service in July 2002 and discharged from the army. He is now entitled to a disability pension.

In October 2002 Mr Akkoyunlu brought compensation proceedings before the Supreme Military Administrative Court for the damage he had suffered to his eye during his military service on account of the delay in his treatment. He had notably been informed by the medics at the hospital where he had been treated that it was crucial in corneal ulcer cases to have immediate treatment to prevent scarring of the cornea. In May 2005 the administrative court dismissed his claim. It based its decision on an expert report drawn up during the proceedings which concluded that the cause of Mr Akkoyunlu's corneal ulcer could not be determined and no fault could be attributed to the military authorities in his transfer, diagnosis or treatment. Neither the administrative court nor the experts appointed by it sought to question the doctor who had allegedly examined Mr Akkoyunlu when he had first gone to the infirmary complaining of eye pain. Mr Akkoyunlu's request for rectification of that decision was refused in September 2005.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Akkoyunlu alleged that because his regiment had not immediately referred him to hospital, he had been

delayed access to appropriate medical treatment and this had resulted in him losing the sight in his left eye.

Violation of Article 3 (positive obligations)

Just satisfaction: EUR 66,000 (pecuniary damage) and EUR 15,000 (non-pecuniary damage)

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