



Judgments of 15 January 2019

The European Court of Human Rights has today notified in writing 24 judgments¹:

eight Chamber judgments are summarised below; separate press releases have been issued for four other Chamber judgments in the cases of *Mătășaru v. the Republic of Moldova* (applications nos. 69714/16 and 71685/16), *Ilgiz Khalikov v. Russia* (no. 48724/15), *Kopytok v. Russia* (no. 48812/09), and *Gjini v. Serbia* (no. 1128/16);

12 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 ().*

Just Satisfaction

Grigolovič v. Lithuania (application no. 54882/10)

The case concerned the question of just satisfaction with regard to proceedings to have Mr Grigolovič's property rights to part of his father's land restored.

In its [principal judgment](#) of 10 October 2017 the Court held that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights and reserved the question of just satisfaction for examination at a later date.

Just satisfaction: 26,100 euros (EUR) for pecuniary damage and EUR 6,500 for non-pecuniary damage.

Edward Zammit Maempel and Cynthia Zammit Maempel v. Malta (no. 3356/15)

The applicants, Edward Zammit Maempel and Cynthia Zammit Maempel, are two Maltese nationals who were both born in 1968 and live in Marsalforn and Naxxar (Malta), respectively.

The case concerned the interference of the Maltese authorities with the applicants' property.

The applicants are the owners (each owns a half undivided share) of a property located in Malta. In November 1986 they granted the property on emphyteusis (the right to hold property under a long-term or perpetual lease) for 21 years to Mr and Ms E. In December 1992, the property was requisitioned by the Director of Social Housing and allocated to Mr and Ms A. In March 1997, at the request of the Housing Authority, the emphyteutic grant in favour of Mr and Ms E. was transferred to Mr and Ms A. The contract of emphyteusis expired in 2007. However, in accordance with Maltese law, Mr and Ms A. continued to occupy the property by title of lease. They paid the applicants a rental amount which they did not accept, on the grounds that it was low when compared with the rental value the property would fetch on the open market.

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

In March 2009 the applicants filed constitutional redress proceedings. In March 2013 the court decided in their favour, finding a violation of Article 1 of Protocol No. 1 to the Convention. It declared the requisition order null and void, and ordered the release of the premises with vacant possession in favour of the applicants, as well as the eviction of Mr and Ms A. within one month. It awarded the applicants 50,000 euros (EUR) in compensation (*kumpens dovut*), to be paid by the Housing Authority. The Attorney General and the Housing Authority appealed. In July 2014 the Constitutional Court confirmed that the requisition order was an interference with the applicants' property rights and had violated their rights under Article 1 of Protocol No. 1. However, it revoked the eviction order and reduced the compensation due for non-pecuniary damage to EUR 12,000.

In August 2014 the Housing Authority revoked the requisition order, however, up to the date of the lodging of the application, the property had still not been returned to the applicants. In October 2014, the applicants wrote to the Housing Authority, requesting that it prepare a report on the state of the premises at the end of the requisition period. In August 2015 the Housing Authority wrote to the applicants, informing them that they could collect the keys to the property. The applicants refused to withdraw the keys in the absence of a condition report. The authorities refused to cooperate and informed the applicants that if they wished they could draw up a report at their own expense. The applicants failed to withdraw the keys and in September 2016 the Housing Authority deposited them in court.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained of an ongoing interference with their property. Relying on Article 13 (right to an effective remedy) in conjunction with Article 1 of Protocol No. 1, they complained of the lack of an effective remedy, in particular given the insufficient redress provided by the Constitutional Court.

Violation of Article 1 of Protocol No.1

Violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1

Just satisfaction: EUR 33,000 (pecuniary damage) and EUR 3,230 (costs and expenses) to the applicants jointly.

Grech and Others v. Malta (no. 69287/14)

The applicants, Mary Grech, Christopher Mintoff, Stephanie Mintoff, and Lilian Wismayer are Maltese nationals who were born in 1932, 1986, 1990, and 1954 and live in Birkirkara, Tarxien and Kappara respectively (all in Malta).

The case concerned a requisition order which had been found by the domestic courts to be in violation of the applicants' property rights due to its disproportionate effects.

The applicants are part-owners of a property named "Assunta" in Paola, Malta, which is a 20th-century corner town house. In March 1962 the applicants' ancestor, as owner of the property, had granted it on temporary emphyteusis (the right to hold property under a long-term or perpetual lease) for 17 years to J.S. In 1971 a certain C.C. had obtained the *sub-utile dominium* (by way of sub-emphyteusis) of the property from J.S.

In March 1979 when the temporary emphyteusis came to an end, C.C. continued to live in the property as a result of Maltese law, which provided for the conversion of temporary emphyteusis contracts into leases. In April 1986 the property was requisitioned by the State. In October 1986 the Housing Department allocated the property to D.L. for residential use. To the applicants' knowledge, there was no pressing social need for such an allocation. The owners refused to take any rent and did not recognise the occupants, D.L. and her husband, as tenants. Eventually the owners became aware that the occupants were also occupying a portion of an adjacent property, also owned by the applicants, which was not covered by the requisition order. The owners informed the authorities of this but no action was taken. After D.L. and D.L.'s husband had died, their son L.L. filed a request to

be recognised as tenant of the premises, which was granted in September 2003, despite the owners' objections. L.L. then applied for a grant to make alterations to the premises, including the adjacent room. When the owners became aware of it, they filed an objection. However, a permit to make structural alterations was issued in April 2007. In the applicants' view these structural changes have affected the character of the property and its value.

In May 2007 the owners began constitutional redress proceedings. Pending the completion of the proceedings the property was derequisitioned; however, the Government admitted that it had not recovered the keys. In April 2011 the Civil Court decided in favour of the owners, finding a violation of Article 1 of Protocol No.1 and, being unable to annul the requisition order which had come to an end, ordering the defendants to return the property, free and unencumbered, to the owners. It also awarded EUR 7,535 in compensation, with costs against the Government. The court considered that while the requisition order had been lawful and had pursued a legitimate aim, it had failed to strike a fair balance.

Both parties appealed and in April 2014 the Constitutional Court made an award for non-pecuniary damage of EUR 5,000, to be added to the previous award for pecuniary damage (a total of EUR 12,535). The property was subsequently returned to the owners in a poor state.

Relying on Article 1 of Protocol No. 1 (protection of property) and Article 13 (right to an effective remedy) in conjunction with Article 1 of Protocol No. 1, the applicants complained that they could not make use of their property for a number of years, for which they had not received adequate compensation. They argued in particular that the finding of the domestic courts had not been sufficient to remove their victim status as they had not been adequately compensated. Lastly, they maintained that the compensation had been based on rental values which had not been compatible with the Convention.

Violation of Article 1 of Protocol No. 1

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

Just satisfaction: EUR 8,000 (pecuniary damage), EUR 2,400 (non-pecuniary damage), and EUR 3,000 (costs and expenses)

Altınkaynak and Others v. Turkey (no. 12541/06)*

The six applicants, Erkin Altınkaynak (born in 1963, died in 2016), Meral Altınkaynak (born in 1965), Sibel Sahlimov (born in 1978), Hüsnü Bostan (born in 1978), Volkan Atalp (born in 1969) and Sahire Melek Jones (born in 1958), are Turkish nationals who in September 2004 set up a foundation – Türkiye Yedincigün Adventistleri Vakfı (the Foundation of Turkish Seventh-day Adventists) – for the purpose of meeting the religious needs of Turkish and foreign Seventh-day Adventists living permanently or temporarily in Turkey.

The case concerned the Turkish courts' refusal to include the foundation in question in the official register on the grounds that domestic law did not allow foundations to serve the sole interests of members of a specific community.

In October 2004 the applicants requested that the court of first instance enter their foundation in the official register, relying, in particular, on the relevant provisions of UN statutes, the rights and freedoms guaranteed by the Convention, the Constitution and national legislation, as well as the principle of secularism. The court dismissed that request on the grounds that the foundation's aim was to meet the religious needs of persons accepting the beliefs of Seventh-day Adventists, which was incompatible with the provisions of Article 101 § 4 of the Civil Code prohibiting the setting up of foundations designed to support the members of a specific community. The Court of Cassation upheld that judgment.

Relying on Article 9 (right to freedom of thought, conscience and religion), Article 11 (freedom of assembly and association), Article 14 (prohibition of discrimination), Article 17 (prohibition of abuse of rights) and Article 18 (limitation on use of restrictions on rights), the applicants complained about the Turkish courts' refusal to enter their foundation in the official register. The Court decided to examine the applicants' complaints under Article 11 of the Convention.

Violation of Article 11

Just satisfaction: EUR 2,724 (pecuniary damage), EUR 3,000 (non-pecuniary damage), and EUR 3,000 (costs and expenses) to the applicants jointly.

Basa v. Turkey (nos. 18740/05 and 19507/05)*

The applicants, Hasan Sancak Basa, Ferah Basa, Sönmez Basa, Uğur İstiklal Basa, Osman Barış Basa, Süleyman Hasan Basa, İbrahim Ramazan Basa and Asiye Berat Basa, are eight Turkish nationals who were born in 1969, 1942, 1967, 1972, 1974, 1968, 1974, and 1969 respectively and who live in Istanbul, Rize and Ankara (Turkey). The case concerned an alleged violation of the right to respect for their property and a complaint concerning the excessive length of the corresponding judicial proceedings.

In 1980 the authorities registered property located in Pazar, a district in Rize Province. After the registration procedure, the cadastral commission registered several plots as belonging to the applicants' ancestors under an Ottoman ownership title held by the same applicants, covering a total area of about 5,000 m². One of the boundaries set out in the title was formed by the river Hemşin, which had, however, changed course in 1946 in the wake of a series of natural phenomena.

At various times the Treasury and Pazar Municipality had objected to those findings, which objections had been dismissed by the cadastral commission. The Treasury applied to the Pazar land tribunal to set aside the cadastral findings concerning the impugned plots of land, arguing that since the property in question was located on the course of a major river it could not belong to any private individual.

By judgment of 14 February 2000, the tribunal dismissed the authorities' appeal and upheld the conclusions of the cadastral commission, on the grounds that the boundaries mentioned in the applicants' title did indeed correspond to those of the impugned plots of land. On 12 July 2000, ruling on the authorities' appeal on points of law, the Court of Cassation set the judgment aside. The court held that the impugned ownership title related to property whose boundaries were not hard and fast, given that the river which had formed one of those boundaries had changed course. It pointed out that this meant that the area mentioned in the title should prevail. Although the applicants were in possession of a judgment delivered by the court of first instance on 24 June 1947 amending the area mentioned in the title, that judgment was not binding upon the Treasury, which had not been a party to proceedings. Ruling on the case referred back to it, the tribunal partly allowed the Treasury's claims. The Court of Cassation dismissed the applicants' appeal on points of law and their application for rectification of the judgment.

Relying in particular on Article 6 § 1 (right to a fair hearing within a reasonable time), the applicants complained that the registration of the impugned plots of land in respect of the Treasury amounted to a violation of their right to respect for their property. They also complained of the length of proceedings, which they considered excessive.

Violation of Article 6 § 1 (length of proceedings) – as regards application no. 18740/05

Just satisfaction: EUR 13,000 for pecuniary and non-pecuniary damage and EUR 1,500 for costs and expenses to Hasan Sancak Basa

Kanal v. Turkey (no. 55303/12)*

The applicant, Halil Kanal, was a Turkish national who was born in 1938. At the material time he was living in Antalya (Turkey). He died on 22 June 2014. His heirs wished to continue with the application.

The case concerned allegations of medical negligence. Mr Kanal complained of the after-effects (*sequelae*) of a prostatectomy operation (removal of the prostate in order to treat prostate cancer) caused by an error which he had attributed to the medical staff. After the surgical operation, in particular, he had to urinate through his anus.

Relying in particular on Article 8 (right to respect for private and family life), Mr Kanal submitted that the surgical operation had had harmful consequences for his physical integrity and that he had had no effective remedy for his complaint.

Violation of Article 8 (investigation)

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 2,500 (costs and expenses) to Mr Kanal's heirs jointly.

Öney v. Turkey (no. 49092/12)*

The applicants, Ali Osman Öney and Hanife Öney, are Turkish nationals who were born in 1952 and 1954 respectively and live in Istanbul (Turkey). They are the parents of Emine Öney, who was born in 1982 and died in 2002.

The case concerned the death of the applicants' daughter following a tonsillectomy in a private hospital.

In May 2002, after an operation, Emine Öney suffered severe pain and a cardiac arrest, and was resuscitated by medical staff. The next day she was transferred, unconscious, to the intensive care unit of a public university hospital. The doctors there allegedly told the applicants that their daughter was suffering from a brain injury caused by anaesthetic overdose before her operation, leading to cardiac arrest. After several transfers to different hospitals, Emine Öney died on 24 September 2002.

In October 2008 the Criminal Court found guilty one of the doctors who had been prosecuted for negligence in the exercise of his profession. He received a suspended fine. Subsequently, the Court of Cassation quashed that judgment and declared the criminal proceedings statute-barred. Meanwhile, the applicants had brought an action for damages against two doctors and the hospital itself. In July 2009 the court declared the action for damages as not officially having been lodged, on the grounds that the proceedings had been adjourned twice, and in particular because counsel for the applicants had not appeared at the most recent hearing after being held up by heavy traffic.

Relying on Article 6 (right to a fair trial) Mr and Ms Öney complained that they had not had an effective remedy in order to have the doctors' criminal responsibility and the length of the proceedings examined. The Court examined the applicants' complaints under Article 2 (right to life) of the Convention.

Violation of Article 2 (investigation)

Just satisfaction: EUR 20,000 (non-pecuniary damage) to the applicants jointly

Vira Dovzhenko v. Ukraine (no. 26646/07)

The applicant, Vira Dovzhenko, is a Ukrainian national who was born in 1934 and lives in Bogdany (Ukraine).

The case concerned land she had owned being rented out by the local council without her authorisation and the fact that she had received no compensation for that act.

In January 2004 Ms Dovzhenko acquired title to a plot of agricultural land under a decree issued by the local administration. In July of the same year the local administration rented the plot to a private company, B., which planted seeds and eventually harvested a crop there.

Ms Dovzhenko only learned of the lease in September 2004. A month later she asked the local administration to allow her to establish the boundaries of her land, which was a legal prerequisite for her being able to use the land for farming. The administration issued the appropriate decision and later excluded her land from a list of leased plots.

The applicant went to court to seek compensation for the unauthorised use of her land, claiming a value equal to the worth of the harvest, about 4,493 euros.

The first-instance court upheld her claim in June 2006, but this decision was reversed on appeal. The appeal court found that Ms Dovzhenko had not demarcated her land by the time the lease agreement with B. had been concluded and so she had not been able to use the plot herself. Accordingly, she could not claim any interest in the harvest.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained that she had suffered an unlawful and disproportionate interference with her rights owing to the letting of the land without her consent and the lack of any compensation.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 4,000 for pecuniary and non-pecuniary damage

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