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

Press Release
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Judgments of 15 November 2016

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

ten Chamber judgments are summarised below;

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 in French are indicated with an asterisk (*).

Misiukonis and Others v. Lithuania (application no. 49426/09)

The applicants, Jurgis Misiukonis, Birutė Misiukonienė, and Jurgita Visockienė, are Lithuanian nationals who were born in 1940, 1942, and 1977 respectively. Mr Misiukonis and Ms Misiukonienė, who are married, live in Kaunas (Lithuania). Ms Visockienė is their daughter, and lives in France. The case concerned payments made for certain property rights.

On 26 January 2001, with the help of a local authority employee E.K., the applicants and their son/brother V.M. purchased from G.O an entitlement to receive 0.728 hectares of land from the State. In June 2001, the local authority awarded each of them a plot of 0.182 hectares. Two months later, the applicants and V.M. sold their plots of 0.182 hectares to third parties, for 25,000 Lithuanian litai (LTL) each.

In January 2002, the district prosecutor brought proceedings challenging the decisions which had led to the applicants and V.M. obtaining the plots. In February 2006 the Vilnius City First District Court held that G.O. had been entitled to receive land and had lawfully sold this entitlement; however, he had only been entitled to receive one plot of up to 0.2 hectares, whereas the remaining land had to be compensated to him in cash. To regularise the situation, the court ordered the applicants and V.M. to pay the State the market value of the four plots that they had received and sold, amounting to LTL 216,000 for each plot, while they remained entitled to receive one new plot of up to 0.2 hectares. The applicants lodged two appeals against the decision, but these were dismissed.

In 2007, the district prosecutor concluded that some local authority employees had acted unlawfully in registering the land rights, but the investigation was discontinued as time-barred.

The applicants brought a claim against the State for damages. They complained that, though each of them had received LTL 25,000 for selling the land, they had each been ordered to pay the State LTL 216,000 – leading to a loss of LTL 191,000 each. However, the Vilnius Regional Administrative Court dismissed the claim, finding that the applicants should have known that they had received the land unlawfully and therefore that they had contributed to the damage themselves. The applicants appealed to the Supreme Administrative Court, but the appeal was dismissed on 2 March 2009.

[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

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, the applicants complained that they had had to pay the State more money than they had actually received from selling the land.

Violation of Article 1 of Protocol No. 1

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

Revision

Alecu and Others v. Romania (no. 56838/08 and 80 other applications)

The applicants are 81 Romanian nationals who were born between 1934 and 1978 and live in Bucharest, Popeşti-Leordeni, Braşov, Voluntari (Ilfov), Piteşti, Albota (Argeş), Cluj-Napoca, Ploieşti, Domneşti (Argeş), Piteşti (Argeş), Cărpiniş (Timiş), Timişoara, Curtea de Argeş, Grădiştea (Vâlcea), Constanţa, Cărbunari (Maramureş), and Codlea, all in Romania, and in Villasequilla, Spain.

The applicants are the victims or heirs of victims of the armed crackdown on demonstrations against the communist dictatorship, beginning on 21 December 1989 in Bucharest and in other cities in the country, which led to the collapse of the regime (see Chamber judgment *Association "21 December 1989" and Others v. Romania* of 24 May 2011).

All the applicants made their allegations in the context of the investigation opened by official order in 1990 concerning the armed crackdown.

In its judgment of 27 January 2015 the Court found a violation of Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention on account of the competent authorities' failure to carry out an effective investigation into the death of their family members or into the ill-treatment to which the applicants themselves or their relatives had been subjected during the crackdown.

The Government had requested revision of the judgment of 27 January 2015, which had not yet been enforced because four of the applicants had died before the judgment had been adopted.

In its judgment today the Court **decided to revise** its judgment of 27 January 2015 in respect of applications nos. 481/09, 707/09, 10458/09 and 10472/09, and to strike application no. 707/09 lodged by Niculae Dinu out of its list of cases.The Court held that Romania was to pay to each of the heirs of Mihai Uivary, Lidia Kelemen and Gheorghe Daniluc the following amounts for non-pecuniary damage: 7,500 euros (EUR) to Georgeta Uivary and EUR 15,000 each to Ileana Iakab and Maria Daniluc.

Revision

Bosnigeanu and Others v. Romania (no. 56861/08 and 33 other applications)

The applicants are 34 Romanian nationals who were born between 1924 and 1971 and live in Bucharest, Piteşti, Argeş, Domneşti, Prunaru and Teleorman (Romania). They all took part in the demonstrations against the communist regime from 21 to 23 December 1989 in Bucharest and other towns and cities, which led to the fall of that regime.

The case concerned the request for revision of a judgment of the European Court of Human Rights, relating to the length of the criminal proceedings which the applicants had joined as civil parties, alleging ill-treatment at the hands of the law enforcement agencies.

In its judgment of 4 November 2014 the Court found a violation of Article 6 § 1 (right to a fair trial within a reasonable time). The Government has now requested revision of that judgment, which has not yet been enforced because three of the applicants had died before the judgment was adopted.

In its judgment today the Court **decided to revise** its judgment of 4 November 2014 in respect of applications nos. 56874/08, 56880/08 and 10459/09, and to strike applications nos. 56874/08 and 56880/08 lodged respectively by Alexandru Clincea and by Ion Cutuca out of its list of cases. The Court held that Romania was to pay to Cosmin-Mihai Dragnea, the heir of Dan Dragnea, EUR 1,350 in respect of non-pecuniary damage.

Revision

Hagiescu and Others v. Romania (no. 7901/02)

The applicants, Mircea Dumitru Grigore Hagiescu, Andrei-Grigore Alexandrescu and Domnica-Suzana Manicatide, are Romanian nationals who were born in 1931, 1943, and 1944 respectively and live in Bucharest.

The applicants are the heirs of the former owners of a property in Bucharest that was nationalised. In a final judgment delivered in 1994 the Romanian courts found that the nationalisation of the property had been illegal. However, in 2001 an action for recovery of possession brought by the applicants was dismissed, on the ground that the building in question was public property belonging to the State, by virtue of a new special law of 8 February 2001 whose provisions were deemed applicable to pending disputes. Although the Romanian courts nevertheless indicated that the applicants were entitled to an award of pecuniary compensation, they have so far not been granted restitution of the property or any other form of compensation.

In its principal judgment of 13 November 2008 the Court found violations of Article 6 § 1 (access to court) and Article 1 of Protocol No. 1 (protection of property) on account of the fact that the applicants' action for recovery of possession had been dismissed and that it was impossible for them to obtain restitution of the building in question. In its judgment of 18 March 2014 the Court awarded EUR 4,700 to the applicants jointly for non-pecuniary damage.

The Government have now requested revision of the judgment of 18 March 2014, which has not yet been enforced, because Andrei-Grigore Alexandrescu had died before the judgment was adopted.

In its judgment today the Court **decided to revise** its judgment of 18 March 2014 insofar as it concerned the claims made by Domnica-Suzana Manicatide, Mr Alexandrescu's heir, under Article 41 (just satisfaction) of the Convention. It held that Romania was to pay EUR 3,120 to Domnica-Suzana Manicatide and EUR 1,580 to Mircea Dumitru Grigore Hagiescu in respect of non-pecuniary damage.

Tudoroaie v. Romania (no. 37665/12)*

The applicant, Andrei Tudoroaie, is a Romanian national who was born in 1984 and lives in the United Kingdom.

The case concerned an assault on Mr Tudoroaie by private individuals and the investigation carried out in connection with it.

On 27 October 2006 Mr Tudoroaie and two other persons (B. and V.) were caught in the act by I. and A. while they were removing a tyre from I.'s car. A fight broke out, as a result of which Mr Tudoroaie and B. were injured and taken to hospital. On the same date the police opened criminal proceedings for theft against Mr Tudoroaie and his two friends. On his release from hospital Mr Tudoroaie was questioned by the police, and told them that he and his two friends had wished to play a joke in removing the tyre from the car. He also made a written statement, indicating that he did not wish to file a complaint against his assailants (I. and A.). On 20 August 2007 the prosecutor's office closed the criminal proceedings for theft, on the ground that the facts did not pose the level of danger to society required by the criminal law, but nonetheless imposed an administrative fine on

Mr Tudoroaie. The prosecutor's office also discontinued the case with regard to assault on the ground that Mr Tudoroaie and his friend had not lodged a complaint.

In the meantime, on 23 December 2006, Mr Tudoroaie had sent the police, by post, a criminal complaint against the owner of the vehicle (I.), accusing him of assault and referring to a forensic medical certificate stating that he (Mr Tudoroaie) had injuries which could be dated to the day of the assault and which required 16 to 18 days of medical treatment. He subsequently also lodged a complaint against A., alleging that A. had kicked him several times in the stomach and on the face, mutilating him. However, the respective proceedings were discontinued on account of the special limitation period in respect of the offence, in October 2011 for I. and in October 2015 for A.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Tudoroaie complained about the lack of an effective and prompt investigation into the attack against him.

Violation of Article 3 (investigation)

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 Tudoroaie. It further awarded him EUR 1400 for costs and expenses.

Goryachkin v. Russia (no. 34636/09)

The applicant, Sergey Goryachkin, is a Russian national who was born in 1982 and lives in Krasnoyarsk (Russia). The case concerned Mr Goryachkin's allegations that he had ill-treated during his imprisonment, and court proceedings relating to his claims.

In January 2005, Mr Goryachkin was convicted of aggravated robbery by the Achinsk Town Court of the Krasnoyarsk Region, and sentenced to nine years' imprisonment. He was imprisoned in Krasnoyarsk Region correctional colony no. IK-235/26-22.

During his imprisonment, Mr Goryachkin was detained in disciplinary cells on several occasions, which he alleges had poor ventilation, poor lighting, and inadequate sanitary conditions. Furthermore, starting in August 2007, Mr Goryachkin was placed in the single-cell wing of the correctional colony for 11 months, which implemented a stricter regime than the rest of the facility. He alleges that during this time he was beaten up by prison guards on two occasions, allegedly for 2 to 3 hours each time, and that he sustained significant injuries. A complaint was made to the local authorities about the alleged beatings, but this was repeatedly dismissed as unfounded by prosecutors. During his detention, Mr Goryachkin suffered from a wide range of health problems, including lumbalgia, cystisis, deep-vein thrombosis and lymphedema.

Mr Goryachkin issued two sets of civil proceedings against the authorities, claiming that he was subjected to poor conditions in the prison hospital and the single-cell wing, and that he had not been given adequate medical care for his ailments. Both claims were dismissed, the last of the decisions being issued on 28 April 2011. In both sets of proceedings, Mr Goryachkin requested leave to appear before the courts; however, his requests were denied, and he was not allowed to attend the hearings.

Relying in particular on Article 6 § 1 (right to a fair hearing) Mr Goryachkin complained that he had been denied an opportunity to appear in person before a court, when making his civil claims against the authorities.

Violation of Article 6 § 1

Just satisfaction: EUR 1,500 (non-pecuniary damage)

Zolotarev v. Russia (no. 43083/06)*

The applicant, Aleksandr Zolotarev, is a Russian national who was born in 1979. He is currently serving a 20-year prison sentence in the IK-12 Nizhniy-Taghil correctional colony (Sverdlovsk Region, Russia).

The case primarily concerned allegations of ill-treatment and a complaint concerning interference with the right of individual petition.

On 12 January 2005 Mr Zolotarev and his girlfriend were arrested on suspicion of theft and burglary. He alleges that he was severely beaten in the police station between 12 January 2005 and 14 January 2005 in order to obtain a confession.

On 14 January 2005 Mr Zolotarev appeared before a judge, who ordered that he be placed in pre-trial detention and also ordered a medical examination, as the applicant had complained of ill-treatment. A hospital doctor found multiple bruises on the upper and lower limbs. The doctor at the prison to which he was transferred on 21 January 2005 also noted injuries.

On 30 January 2005 the investigator refused to open a criminal investigation on the ground that there had been no offence committed, but Mr Zolotarev asked the investigator's superior to reconsider that decision. On 15 October 2005 the deputy district prosecutor ordered an additional investigation. Mr Zolotarev was subsequently informed that the investigation had resulted in a decision of 4 November 2005, which had been set aside by a decision of 17 November 2005, and that a further investigation had been ordered. Mr Zolotarev then submitted a judicial appeal, complaining of the prosecutor's inertia, but this was declared inadmissible.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Zolotarev alleged primarily that he had been severely beaten by the police officers and that there had been no effective investigation into his complaints. Relying on Article 34 (right of individual petition), he also complained that his letters to the Court had been opened and monitored.

Violation of Article 3 (inhuman and degrading treatment)
Violation of Article 3 (investigation)
Violation of Article 34

Just satisfaction: EUR 13,000 (non-pecuniary damage) and EUR 2,600 (costs and expenses)

Hamdemir and Others v. Turkey (no. 41896/08)*

The applicants are twelve Turkish nationals, relatives of the victims of the police operation carried out in December 2000 in Bayrampaşa Prison.

In October 2000 prisoners in various Turkish prisons went on hunger strike to protest against the plans for "F-type" prisons, which were intended to introduce smaller detention units for prisoners. In December 2000 a team of mediators held talks with the strikers. A delegation from the European Committee for the Prevention of Torture (CPT) travelled to Turkey. No solution could be found. The Governor of Bayrampaşa Prison asked for intervention by the security forces. On 19 December 2000 the security forces intervened simultaneously in about twenty prisons. In Bayrampaşa Prison, twelve prisoners were killed and about fifty were wounded, some of them by gunfire. According to a report prepared by the fire service, a fire had been lit by the prisoners and, according to the autopsy reports, the applicants' relatives had succumbed to carbon dioxide poisoning, gunshots or explosives. A criminal trial is still ongoing. Criminal proceedings for abuse of power, brought against the prison security staff and the gendarmes who took part in evacuating the prison, have become time-barred.

Relying in particular on Article 2 (right to life), the applicants criticised the authorities for having used excessive and disproportionate force during the operation in Bayrampaşa Prison.

Violation of Article 2

Just satisfaction: The applicants did not formulate a claim for just satisfaction.

Keriman Tekin v. Turkey (no. 22035/10)*

The applicants, Keriman Tekin, Ersin Tekin, Gürgin Tekin, Metin Tekin, Nedim Tekin, Nimet Tekin, Orhan Tekin, Suryet Tekin and Vehbi Tekin, are Turkish nationals who are all members of the same family. They were born between 1957 and 1993 and live in Kulp (Diyarbakır, Turkey).

The case concerned the damage which was caused to the applicants' house by the construction of a nearby school.

In September 2004 the authorities concluded a contract with a private company for the demolition and reconstruction of a school near the applicants' place of residence. From the start of the work, the neighbouring houses, including that of the applicants, suffered considerable damage, forcing the applicants to leave their home, which had become unfit for human habitation.

In August 2005 the applicants applied to the Governor's Office for compensation, but their claim was dismissed. They then lodged an appeal with the Diyarbakır Administrative Court, which dismissed it, holding that the applicants had built their house on land that was at risk of a landslide; that they had never obtained planning permission and that they did not have a permit to live there; that their house was one of the buildings subject to demolition under the legislative provisions in force; and that in the absence of a permit, the applicants did not have a legally protected interest. That judgment was upheld by the Supreme Administrative Court in December 2008.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), the applicants alleged that there had been an interference with their right to peaceful enjoyment of their possessions.

Violation of Article 1 of Protocol No. 1
The Court further declared **inadmissible** the application insofar as it concerned Vehbi Tekin

Just satisfaction: EUR 11,000 (pecuniary damage), EUR 5,000 (non-pecuniary damage) and EUR 1,200 (costs and expenses) jointly to Keriman Tekin, Ersin Tekin, Gürgin Tekin, Metin Tekin, Nedim Tekin, Nimet Tekin, Orhan Tekin and Suryet Tekin

Savda v. Turkey (no. 2) (no. 2458/12)*

The applicant, Halil Savda, is a Turkish national who was born in 1974 and lives in Istanbul (Turkey).

The case concerned Mr Savda's criminal conviction for having read out a statement to the press entitled "*We are in solidarity with the Israeli conscientious objectors*".

On 1 August 2006 five individuals, members of the Anti-Militarist Platform, met in front of the Israeli Consulate in Istanbul, in support of Israeli conscientious objectors. In the course of the gathering Mr Savda read out a statement for the attention of the press.

Criminal proceedings were brought against him and in August 2008 he was sentenced to a five-month prison sentence on the ground that he had incited the population to evade military service by means of a public statement; the court noted in particular that Mr Savda was a conscientious objector and that he had called on persons who did not define themselves as conscientious objectors to evade military service. The Court of Cassation upheld that judgment in November 2010.

Relying in particular on Article 10 (freedom of expression), Mr Savda complained about his conviction in criminal proceedings for having read out a statement to the press.

Violation of Article 10

Just satisfaction: EUR 2,500 (non-pecuniary damage)

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