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

Press Release
issued by the Registrar of the Court

ECHR 019 (2021)
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Judgments of 19 January 2021

The European Court of Human Rights has today notified in writing 20 judgments[1]:

three Chamber judgments are summarised below;

separate press releases have been issued for five other Chamber judgments in the cases of: *X v. Romania and Y v. Romania* (applications nos. 2145/16 and 20607/16), *Shlykov and Others v. Russia* (nos. 78638/11, 6086/14, 11402/17, and 82420/17), *Timofeyev* and *Postupkin v. Russia* (nos. 45431/14 and 22769/15), *Lăcătuş v. Switzerland* (no. 14065/15), and *Atilla Taş v. Turkey* (no. 72/17);

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 are indicated with an asterisk (*).

Keskin v. the Netherlands (application no. 2205/16)

The applicant, Vahap Keskin, is a dual Turkish and Dutch national who was born in 1972 and lives in Hengelo (the Netherlands).

The case concerned criminal proceedings against the applicant in which he had been prevented from cross examining witnesses.

On 30 July 2013 the applicant was convicted in absentia of fraud committed via a company on the basis of, among other things, the statements of six witnesses. He was sentenced to nine months' imprisonment, which was partially suspended, and ordered to pay 59,300.42 euros in damages.

He appealed, arguing that he had not directed the fraud, asking to cross-examine the six witnesses mentioned above along with a seventh witness who had also made statements against him. Despite the support of the prosecution, the request to cross-examine was rejected, by the Arnhem Leeuwarden Court of Appeal, which stated that the interests of the applicant were unsubstantiated. His conviction and the damages order were upheld, but the court reduced his prison sentence to six months.

On 8 September 2015 a cassation appeal by the applicant, claiming a failure to ensure a fair trial, was declared inadmissible by the Supreme Court.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial) of the European Convention on Human Rights the applicant complained of being denied a fair hearing owing to his inability to put questions to witnesses.

Violation of Article 6 §§ 1 and 3 (d)

[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

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 Keskin and that the respondent State was to pay him 692.65 euros (EUR) for costs and expenses.

Aktiva DOO v. Serbia (no. 23079/11)

The applicant, Activa DOO, is a company based in Belgrade.

The case concerned seizure and sale by the State of goods owned by the applicant company.

In late 2004 the applicant company legally imported about 650 tonnes of smooth iron rods and 252 tonnes of corrugated iron rods for use in reinforced concrete. They were stored at other companies' warehouses.

In January 2005 the warehouses were inspected. The authorities found record-keeping breaches amounting to a misdemeanour. The seizure of the applicant company's goods was ordered in separate decisions of 28 and 31 January 2005.

The decision of 28 January was upheld by the relevant Government ministry. The applicant company sought judicial review before the Supreme Court, which annulled the initial decisions. A new seizure of the goods was ordered and upheld by the Supreme Court. The applicant company lodged an appeal with the Constitutional Court, which asked the applicant company to state "clear legal reasons under the constitution for its complaint". The appeal was rejected, with the Constitutional Court finding that the applicant company had merely reiterated its original appeal grounds.

The decision of 31 January went through a similar process before the lower courts. However, the Constitutional Court on 15 May 2014 quashed the earlier decisions and ordered a fresh examination. The Administrative Court ordered that the applicant company's goods be returned to it on 31 January 2015, with the value being paid back in enforcement proceedings. The authorities launched an appeal on points of law, which resulted in reinitiated proceedings, which are still pending.

Misdemeanour proceedings were initiated against the applicant company and its managing director for the book-keeping breaches. Before the matter could be finalised, the alleged offence became time barred.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention, the applicant company complained that the seizure and sale of its goods had violated its rights.

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 applicant company and that the respondent State was to pay the applicant company EUR 1,200 for costs and expenses.

The Court further held that the question of the application of Article 41 (just satisfaction) in so far as pecuniary damage was concerned was not ready for decision and reserved it for examination at a later date.

Mehdi Tanrıkulu v. Turkey (no. 33374/10)*

The applicant, Mehdi Tanrıkulu, is a Turkish national who was born in 1965. He lives in Diyarbakır. At the relevant time he was the editor-in-chief of Azadiya Welat, a daily newspaper published in Kurdish in Turkey.

The case concerned Mr Tanrıkulu's placement in detention on account of articles published in the newspaper Azadiya Welat in January and March 2010, and the subsequent criminal proceedings.

In February 2010 the public prosecutor charged Mr Tanrıkulu with disseminating propaganda in favour of the PKK (Kurdistan Workers' Party, an illegal armed organisation) on account of articles published on 23 and 24 January 2010. The Assize Court remanded the applicant in custody in April 2010.

The public prosecutor subsequently questioned Mr Tanrıkulu in the context of a second set of criminal proceedings, concerning four articles published on 6, 7, 27 and 28 March 2010. The Assize Court also ordered his pre-trial detention in connection with this second set of proceedings. The two sets of proceedings were subsequently joined.

In October 2010 Mr Tanrıkulu was found guilty of the offence of disseminating propaganda in favour of a terrorist organisation under Articles 220 § 6 and 314 of the Criminal Code. The Assize Court held that the offence in question had been committed on six occasions, in the articles of 23 and 24 January and those of 6, 7, 27 and 28 March 2010, in that the head of the PKK had been depicted as the "leader of the Kurdish people" and the members of that organisation had been described as "pioneers", "heroes", "martyrs", "guerrilla fighters" and "stalwarts". The court also found that the articles in question, whose authors were unknown, had presented a real danger to public order, on the grounds that they disseminated hatred and called for or promoted violence. Mr Tanrıkulu was sentenced to a total of seven years and six months' imprisonment.

In January 2013 the Court of Cassation overturned the Assize Court judgment, finding that the case should be re-examined in the light of provisional section 1 of Law no. 6352 which provided, among other things, for the suspension of criminal proceedings and sentences in cases concerning offences committed through the press and the media. In March 2013, taking note of the entry into force of the new Law, the Assize Court stayed execution of Mr Tanrıkulu's sentence for three years.

Relying on Article 5 (right to liberty and security) and Article 10 (freedom of expression) of the Convention, Mr Tanrıkulu complained of his pre-trial detention and of the criminal proceedings brought against him on account of the publication of the articles in question in the newspaper of which he had been editor-in-chief.

Violation of Article 5 § 1
Violation of Article 10 (pre-trial detention)
Violation of Article 10 on account of the criminal proceedings instituted against Mr Tanrıkulu following the publication of the 23 and 24 January 2010 issues of Azadiya Welat daily
No violation of Article 10 on account of the criminal proceedings instituted against Mr Tanrıkulu following the publication of the 6, 7, 27 and 28 March 2010 issues of Azadiya Welat daily

Just satisfaction: EUR 5,000 (non-pecuniary damage)

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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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.