



Judgments of 22 September 2015

The European Court of Human Rights has today notified in writing nine Chamber judgments¹, which are summarised below.

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

Koutsoliontos and Pantazis v. Greece (applications nos. 54608/09 and 54590/09)*

The applicants, Vassilios Koutsoliontos and Spyridon Pantazis, are Greek nationals who were born in 1949 and 1951 respectively and live in Ioannina. The first applicant is the owner and editor of “Proinos Logos”, a local newspaper published in Ioannina. The second is director of the town’s Historical Monuments Department.

The case concerned the convictions of Mr Koutsoliontos and Mr Pantazis for malicious defamation and insult as a result of the publication of a press article which, according to the Greek courts, had breached a politician’s honour and reputation.

Mr Pantazis wrote an article which was published in “Proinos Logos” criticising the actions of F.F., a former mayor of the town, municipal councillor and leading figure in a political party. The publication of this article took place in the context of a quarrel between F.F., who opposed plans to develop the use of the Oase building, and Mr Pantazis, who approved the project.

F.F. brought proceedings against Mr Koutsoliontos and Mr Pantazis before the Ioannina Court of First Instance. The court held that the disputed article had been intended to defame and insult F.F., and to tarnish his honour, reputation and, more generally, his person. According to the court, the greater part of the article’s content overstepped the boundaries of freedom of the press, guaranteed by Article 10 of the Convention, since its author had not respected F.F.’s person and complied with his duty to tell the truth, as Mr Pantazis knew full well that what was written in the article was not correct. The court of first instance ordered Mr Koutsoliontos and Mr Pantazis jointly and severally to pay F.F. the sum of 15,000 euros. They appealed on points of law. However, the Court of Cassation dismissed their appeals.

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicants alleged, in particular, that there had been an unjustified interference in the exercise of their right to freedom of expression on account of the sentence imposed on them by the civil courts for malicious defamation and insult.

Violation of Article 10

Just satisfaction: The Court held that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage suffered by the applicants. It further awarded 10,269.50 euros (EUR) to Mr Koutsoliontos and EUR 10,200 to Mr Pantazis in respect of pecuniary damage.

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

Lavrentiadis v. Greece (no. 29896/13)*

The applicant, Lavrentios Lavrentiadis, is a Greek national who was born in 1972 and lives in Athens.

The case concerned the detention of Mr Lavrentiadis, who suffers from a chronic auto-immune disease, and the fact that he had been unable to have the inadequacy of the medical treatment received while in detention established by the courts.

Mr Lavrentiadis suffers from juvenile rheumatoid arthrosis, an illness which causes disability in terms of mobility and renders the individual incapable of looking after his or her own basic needs.

On 21 March 2012 proceedings were brought against Mr Lavrentiadis on charges of taking part in the creation and management of a criminal association, fraud, embezzlement and laundering of the proceeds of crime.

Mr Lavrentiadis was placed in detention in the Korydallos Prison on 14 December 2012 and was admitted to the prison's psychiatric hospital on 22 January 2013 on health grounds. At this stage Mr Lavrentiadis needed to be constantly helped by a fellow-prisoner in order to move about, and could not take care of his everyday needs independently. His state of health deteriorated.

On 18 December 2012 Mr Lavrentiadis challenged the decision to place him in detention, and also requested that he appear in person so that the indictments division could observe the deterioration in his health and his level of disability. The indictments division dismissed both of Mr Lavrentiadis' requests, since an appearance in person was provided for only in exceptional circumstances. He lodged other appeals which were also dismissed, and his detention was extended until 24 June 2014.

Relying on Article 5 § 4 (right to speedy review of the lawfulness of his detention) of the European Convention, Mr Lavrentiadis complained that the indictments division at the criminal court had dismissed his request to appear in person before it and that it had taken 87 days to rule on the lawfulness of his detention. Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), he alleged that his placement in detention had been incompatible with his state of health and had caused a deterioration in it, and submitted that no effective remedy had been available to him to complain of the shortcomings in the medical treatment provided to him in the prison's psychiatric hospital.

Violation of Article 5 § 4 – as regards the “speedy” review requirement

Violation of Article 5 § 4 – as regards the equality of arms requirement and the adversarial principle

Violation of Article 3 (degrading treatment)

Violation of Article 13

Just satisfaction: EUR 6,000 (non-pecuniary damage) and EUR 8,000 (costs and expenses)

Rokas v. Greece (no. 55081/09)*

The applicant, Georgios Rokas, is a Greek national who was born in 1959 and lives in Athens.

The case concerned the fact that offences of defamation and making false accusations became -barred on account of the national authorities' alleged inertia in conducting the judicial proceedings.

On 27 June 2001, following a complaint lodged by the company “L.A.”, criminal proceedings were brought against Mr Rokas for forgery. He was ultimately acquitted by a judgment of the Athens Court of Appeal which became final on 19 January 2008.

In the meantime, on 12 December 2002 Mr Rokas had filed a complaint against the representatives of the company “L.A.”, for defamation and making false accusations. On 20 June 2006 the prosecutor suspended those proceedings, initiated by Mr Rokas, pending the delivery of a final decision in the proceedings against him for forgery. The five-year limitation period for the offences in question was also suspended.

On 30 September 2008 the prosecutor concluded that the acts of defamation and making false allegations were covered by the five-year limitation period. He noted that on 20 June 2006, the date on which he had suspended the five-year limitation period, a period of four year, eleven months and 28 days had already passed since 27 June 2001, the date on which the offences of defamation and making false accusations had allegedly been committed. The prosecutor admitted that after 19 January 2008, the date on which the court of appeal's judgment became final, the limitation period continued to run for a further seven days, namely until 27 January 2008, when the five-year limitation period was reached. On 16 October 2008 Mr Rokas lodged an appeal. His appeal was dismissed.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), Mr Rokas alleged that the national authorities' inertia in conducting the proceedings had resulted in the offences in question becoming time-barred before the competent criminal court.

Violation of Article 6 § 1

Just satisfaction: The applicant did not submit a claim for just satisfaction.

Nabil and Others v. Hungary (no. 62116/12)

The applicants, Ahmad Mohamed Nabil, Saleh Ali Isse, and Mohamud Addow Shini, are Somali nationals who were born in 1984, 1974, and 1985 respectively and live in Bicske (Hungary).

The case concerned the applicants' detention pending their eventual deportation to Serbia.

Originally coming through Greece, the three applicants entered Hungary via Serbia in November 2011. They were intercepted and arrested by the Hungarian border police and transferred to a border station. On 6 November 2011 the authorities, considering the applicants to be illegal border-crossers without identity documents, ordered their expulsion to Serbia and their detention with a view to their eventual deportation. Their detention was subsequently reviewed by the domestic courts on five occasions between 8 November 2011 and 3 March 2012, and extended essentially on the grounds that the applicants had entered Hungary illegally and without ID and that there was a risk that they might frustrate their expulsion. In the meantime, on 9 November 2011 the applicants had applied for asylum in Hungary. Their asylum application was dismissed on 19 March 2012. However, having been granted subsidiary protection in the asylum proceedings, they were eventually released on 24 March.

Relying in particular on Article 5 § 1 (right to liberty and security), the applicants complained about their detention without appropriate judicial review, alleging in particular that it had no longer been justified to detain them under domestic law once they had filed their asylum request.

Violation of Article 5 § 1 – concerning the period from 8 November 2011 to 3 March 2012

Just satisfaction: EUR 7,500 to each applicant (non-pecuniary damage) and EUR 3,395 to the applicants jointly (costs and expenses)

Bordenciu v. Romania (no. 36059/12)

The applicant, Miron Bordenciu, is a Romanian national who was born in 1966 and is currently serving a 25-year prison sentence in Târgu Jiu Prison (Romania) for murder.

The case concerned Mr Bordenciu's complaint about his conditions of detention.

Mr Bordenciu has been incarcerated since July 1998 and principally detained in Târgu Jiu Prison. He complained that he had been held in severely overcrowded, unhygienic cells, without natural light, proper ventilation or segregation between smokers and non-smokers. He alleged that he had contracted numerous diseases as a result of these detention conditions.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Bordenciu submitted that such conditions of detention were inhuman.

Violation of Article 3 (degrading treatment)

Just satisfaction: EUR 15,000 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

Nițulescu v. Romania (no. 16184/06)

The applicant, Gabriela Nițulescu, is a Romanian national who was born in 1964 and lives in Moreni (Romania).

The case concerned Ms Nițulescu's complaint about the unfairness of proceedings brought against her for influence peddling.

Ms Nițulescu, employed at the local council, was accused in 2002 by a colleague, R.C.A., of demanding money in exchange for her recommending to the mayor that R.C.A. be given a permanent post. Ms Nițulescu was indicted in June 2003 on a charge of influence peddling. In the ensuing domestic proceedings, she was acquitted in July 2004, the County Court finding that most of R.C.A.'s statements, only corroborated by her husband and brother, were contradictory and could not be supported by recordings that R.C.A. had made of her conversations with Ms Nițulescu, as the correct procedures for telephone tapping had not been respected. This judgment was upheld on appeal, the Court of Appeal also taking into account Ms Nițulescu's claim – corroborated by four other colleagues – that she had received the money from R.C.A. as a loan. However, an appeal on points of law submitted by the prosecutor was subsequently allowed by the High Court of Cassation and Justice, which quashed the first two domestic courts' decisions and convicted Ms Nițulescu of influence peddling and sentenced her to two years' imprisonment, suspended with probation. It essentially based its decision on the audio tapes of the conversations between R.C.A. and Ms Nițulescu.

Relying on Article 6 § 1 (right to a fair trial), Ms Nițulescu complained that her conviction had mainly been based on the audio tapes, despite the fact that they had been recorded without proper judicial authorisation.

Violation of Article 6 § 1

Just satisfaction: EUR 3,000 (non-pecuniary damage)

Abdurakhmanova and Abdulgamidova v. Russia (no. 41437/10)

The applicants, Azha Abdurakhmanova and Sabina Abdulgamidova, are Russian nationals who were born in 1950 and 1987 respectively and live in Makhachkala (Republic of Dagestan, Russia). They are the mother and wife of Abdurakhman Abdurakhmanov, born in 1985, who, the applicants alleged, was abducted by State officials in Dagestan, Russia, and subsequently disappeared.

According to the applicants' submissions, Abdurakhman Abdurakhmanov, who was living with his wife in Moscow, was abducted on 25 June 2010 in Kaspiysk, Dagestan, while visiting relatives there together with his wife. The abduction, by a group of men, some of whom were masked, took place in the street, in daylight, and was witnessed by a number of people, including neighbours and the applicants' relatives. On the same day, a group of officers from the district department of the interior had visited Azha Abdurakhmanova's house and had presented her with an arrest warrant in respect of her son Abdurakhman Abdurakhmanov, who, according to the warrant, was suspected of terrorist activities.

On the day following the abduction, Ms Abdurakhmanova complained about it to the Dagestan FSB and the Dagestan Prosecutor's office; a few days later she also complained to the Dagestan Ministry

of the Interior. On 28 July 2010 a criminal investigation into the abduction was opened. It was later suspended and subsequently resumed and remains pending.

Relying on Article 2 (right to life), the applicants complained that Abdurakhman Abdurakhmanov had been abducted and subsequently deprived of his life by State officials and that the authorities had failed to carry out an effective investigation. They further relied on Article 3 (prohibition of inhuman or degrading treatment) and Article 5 (right to liberty and security), complaining about their mental suffering caused by the disappearance of their son and husband, respectively, and about the unlawfulness of his detention. Finally, they complained that they had not had an effective remedy at national level in respect of the alleged violations, in breach of Article 13 (right to an effective remedy).

Violation of Article 2 (right to life) – in respect of Abdurakhman Abdurakhmanov

Violation of Article 2 (investigation)

Violation of Article 3 – in respect of the applicants

Violation of Article 5 – in respect of Abdurakhman Abdurakhmanov

Violation of Article 13 in conjunction with Article 2

Just satisfaction: EUR 60,000 (non-pecuniary damage), and EUR 3,000 (costs and expenses) to Azha Abdurakhmanova and Sabina Abdulgamidova jointly

Ilkin v. Russia (no. 12436/11)

The applicant, Aleksey Ilkin, is a Russian national who was born in 1977 and lives in Bersenevka (Republic of Mordovia, Russia). The case concerned his pre-trial detention and his complaint about the conditions of his transport to and from the court house.

Mr Ilkin was arrested in July 2010 on charges of, in particular, extortion during his work as a police officer, and subsequently placed in pre-trial detention. In ordering his detention, the district court cited the risk that he might abscond or interfere with the administration of justice. His detention was subsequently extended on several occasions and his appeals against the detention orders were dismissed. He was eventually convicted of extortion by a judgment upheld in July 2011 and sentenced to three years and nine months' imprisonment.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Ilkin complained of the conditions of his transport to and from the court house on numerous occasions in 2010 and 2011, alleging in particular that the vans had been overcrowded and that he had not had the possibility to eat or use the toilet during the journeys, which had lasted for up to almost four hours. He also relied on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), complaining that his pre-trial detention had been unreasonably long, and on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), complaining that the review of one of the detention orders had not been speedy.

Violation of Article 3 (inhuman and degrading treatment) – on account of the conditions of Mr Ilkin's transport to and from the court house

Violation of Article 5 § 3

Violation of Article 5 § 4

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 120 (costs and expenses)

Dedecan and Ok v. Turkey (nos. 22685/09 and 39472/09)*

The applicants, Mustafa Dedecan and Metin Ok, are Turkish nationals who were born in 1974 and 1969 respectively and live in Ankara. Public-sector employees who work as teachers in state schools,

they are also members of the trade union Eğitim ve Bilim Emekçileri Sendikası – Eğitim-Sen (Union of employees in education and science).

The case concerned the transfer of Mr Dedecan and Mr Ok to posts in other towns, on the ground that they had taken part in an illegal demonstration.

On 15 February 2005 Mr Dedecan and Mr Ok took part in a demonstration organised by the Şanlıurfa Platform for Democracy, a civil-society group bringing together various trade unions.

A disciplinary investigation was opened against them on account of their participation in that demonstration. As a disciplinary sanction, any advancement in grade was suspended for one year.

Mr Dedecan and Mr Ok were subsequently transferred to other towns. They brought proceedings before the administrative courts, attempting to have the transfer decisions set aside. The courts dismissed their appeals, noting that they had taken part in an unauthorised demonstration organised by a political party, in the course of which remarks had been made praising the head of an illegal organisation. The courts also considered that Mr Dedecan and Mr Ok had acted in support of a political party and concluded that, given the importance and specific nature of the teaching profession, they no longer satisfied the conditions for exercising their roles as teachers.

Mr Dedecan and Mr Ok lodged an appeal on points of law before the Supreme Administrative Court, which, having received the State Counsel's opinion, upheld the administrative courts' judgments.

The applicants alleged in particular that their transfers had been based on their having taken part in a demonstration organised by their trade union, and had thus amounted to a breach of their right to freedom of association as provided for by Article 11 (freedom of assembly and association).

Violation of Article 11

Just satisfaction: EUR 1,500 each to Mr Dedecan and Mr Ok (non-pecuniary damage)

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