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

Press Release
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ECHR 377 (2016)
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Judgments of 22 November 2016

The European Court of Human Rights has today notified in writing 18 judgments[1]:

six Chamber judgments are summarised below; for one other, in the case of *Kaos Gl v. Turkey* (application no. 4982/07), a separate press release has been issued;

the 11 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 below are indicated with an asterisk (*).

Hiller v. Austria (application no. 1967/14)

The applicant, Rozalia Hiller, is an Austrian national who was born in 1953 and lives in Vienna. The case concerned her son's suicide.

Ms Hiller's son, M.K., born in 1981, jumped in front of a subway train on 12 May 2010 after escaping from the psychiatric hospital where he had been placed. A few months earlier – in March 2010 – a court had ordered his placement on the psychiatric ward of the Otto Wagner Hospital in Vienna, a public institution, following an acute episode of paranoid schizophrenia. Shortly after his hospitalisation he had managed to escape twice from a closed ward. However, from the beginning of April 2010 he had voluntarily taken medicine and his condition had significantly improved. He had thus been transferred to an open ward where he was successively given more freedom, such as being allowed to take walks on his own in the hospital grounds on the condition that he notified hospital staff before going out on a walk and again on his return. On 12 May he did not return from one of these authorised walks; the police informed the hospital later on in the day that he had jumped in front of a train and been killed.

Ms Hiller subsequently brought civil proceedings against the City of Vienna as the authority responsible for the hospital, seeking compensation for the death of her son. She claimed in particular that her son should have been under stricter supervision and been prevented by the hospital staff from leaving the ward, given his unpredictable behaviour and the fact that he had already escaped twice before his death. Ultimately however the domestic courts dismissed Ms Hiller's claim, concluding that the hospital, which had not recorded any signs of self-harm or suicidal thoughts throughout her son's stay in the institution, could not have foreseen her son's escape and subsequent suicide and was not therefore liable.

Moreover, the courts also noted that, given that his condition had been stabilised, restricting his liberty in a closed ward would have raised issues under both domestic law and the European Convention on Human Rights.

Relying on Article 2 (right to life) of the European Convention on Human Rights, Ms Hiller alleged that the hospital authorities had failed in their duty to prevent her mentally-ill son from taking his life.

[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

No violation of Article 2

Erményi v. Hungary (no. 22254/14)

The applicant, Lajos Erményi, now deceased, is a Hungarian national who was born in 1950 and lived in Budapest. The case concerned his dismissal as Vice-President of the Hungarian Supreme Court.

Mr Erményi was appointed Vice-President of the Hungarian Supreme Court in November 2009 for a six-year term. However, he was removed from this position in January 2012, that is to say three years and ten months before the scheduled expiry of his mandate. This event was connected to the premature termination of the President of the Supreme Court's mandate, following his public criticism of judicial reform in Hungary (see *Baka v. Hungary*, Grand Chamber judgment of June 2016).

Mr Erményi remained in office as president of one of the Civil Law division benches of the *Kúria* (the historical Hungarian name by which the Supreme Court was renamed in 2012). He was then released from his duties in July 2012 when the compulsory retirement age of judges was lowered. The new legislation on the retirement age of judges was however subsequently found to be unconstitutional and the termination of his judicial service found to be unlawful. Mr Erményi later opted not to be reinstated to his previous position and received a lump-sum for the termination of his post as judge.

In the meantime, Mr Erményi's constitutional complaint challenging the termination of his mandate as Vice-President of the Supreme Court was rejected on the ground that it had been justified by the full-scale reorganisation of the judicial system.

Relying in particular on Article 8 (right to respect for private life) of the European Convention, Mr Erményi complained that he had been dismissed from his position as Vice-President before the statutory expiry date, thus ruining his career and reputation as well as his social and professional relationships.

Violation of Article 8

Just satisfaction: 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, and EUR 5,000 in respect of costs and expenses, jointly to Éva Koczka, Kinga Erményi and Csaba Erményi, Mr Erményi's heirs.

Abdullahi Elmi and Aweys Abubakar v. Malta (nos. 25794/13 and 28151/13)

The case concerned two asylum seekers' detention for eight months pending the outcome of their asylum procedure and in particular a procedure to assess whether they were minors or not.

The applicants, Burhaan Abdullahi Elmi and Cabdulaahi Aweys Abubakar, are Somali nationals who were born in 1996 and 1995 respectively. At the time of the introduction of their application the two applicants were detained in Safi Barracks Detention Centre, Safi, Malta.

Both applicants arrived in August 2012 in Malta by boat as irregular migrants. They were immediately registered by the immigration police. They were then given two documents in English (a Return Decision and a Removal Order) informing them that their stay was being terminated and that they would remain in custody until they had been removed.

Shortly after their arrival, they both applied for asylum, stating on their forms that they were 16 and 17 years old, respectively. They were referred to the Agency for the Welfare of Asylum Seekers (AWAS), a government-run agency, for an age assessment, which consists of one or two interviews and an X-ray of the wrist bones.

Mr Burhaan Abdullahi Elmi was interviewed and taken for the bone test a few weeks after his arrival. He claims that he was told informally in or around October 2012 that he was found to be a minor

and would be released. He was, however, only released six months later under a care order and placed in an open centre for unaccompanied minors. He subsequently absconded and went to Germany where he is waiting for the outcome of judicial proceedings as to whether he would be sent back to Malta to have his asylum claim determined there.

Mr Cabdulaahi Aweys Abubakar was interviewed some weeks after his arrival and taken for the bone test some five months later. He also claims that he was told informally – in March 2013 – that he was found to be a minor and would be released. He was, however, only released two and a half months later under a care order and placed in an open centre for unaccompanied minors. He was granted subsidiary protection in September 2013.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), both applicants complained about the conditions of their immigration detention for eight months, which had involved overcrowding, lack of light and ventilation, no organised activities and a tense, violent atmosphere. They argued that these conditions had been all the more difficult in view of their vulnerable status as asylum-seekers and minors; indeed, there had been no support mechanism for them and this, combined with the lack of information as to what was going to happen to them or how long they would be detained, had exacerbated their fears. Also relying on Article 5 § 1 (right to liberty and security), they alleged that their detention had been the result of a blanket policy applied to all irregular migrants without distinction or review and had therefore been arbitrary and unlawful; they also complained in particular that they had been detained despite the fact that they had claimed to be minors. They further alleged under Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) that they had not had a remedy to challenge the lawfulness of their detention

Violation of Article 3 (degrading treatment)
Violation of Article 5 § 1
Violation of Article 5 § 4

Just satisfaction: EUR 12,000 each to Abdullahi Elmi and Aweys Abubaka for non-pecuniary damage, and EUR 4,000 to both applicants jointly for costs and expenses

Grebneva and Alisimchik v. Russia (no. 8918/05)

The applicants, Irina Grebneva and Nadezhda Alisimchik, are two Russian nationals who were both born in 1943 and live in Vladivostok (Russia). The case concerned their criminal prosecution for publishing a satirical article in 2003 about the regional prosecutor.

Ms Grebneva is the editor of a weekly newspaper, Arsenyevskiyye Vesti, which is distributed in the Primorskiy Region. Ms Alisimchik is a journalist and columnist at the paper.

In late 2003 during a campaign for elections to the State Duma, the newspaper published a number of satirical articles about the campaign in the Primorskiy Region. In one of these articles, written by Ms Alisimchik and entitled “Candidates must be known from the inside!”, the face of the then prosecutor of the region, Mr V., was depicted on a picture of the body of a woman dressed in a one dollar banknote. In the article, a character named ‘Vasilinka’ had given an interview, and was portrayed in a very negative light – including being labelled as a “prostitute-werewolf”.

Mr V. brought a private criminal prosecution against the applicants, under Article 130 § 2 of the Russian Criminal Code. He alleged that the article had been highly insulting, indecent and defamatory. In June 2004, the Justice of the Peace no.27 in the Frunzenskiy District Court of Vladivostok convicted the applicants of aggravated insult. They were fined 30,000 Russian roubles (approximately 860 euros) each. In particular, the court found that the article had invited the reader to associate the character of ‘Vasilinka’ with Mr. V.. It had therefore portrayed Mr V. as an immoral

and corrupt 'prostitute-werewolf', and that the applicants' actions had been intended to damage the honour, dignity and professional reputation of Mr V..

The Frunzenskiy District Court of Vladivostok heard an appeal of the case. However, in July 2004 it found against the applicants, for reasons similar to those given at first instance. In August 2004 the Primorskiy Regional Court upheld the applicants' conviction in a final appeal, endorsing the reasoning of the lower courts.

Relying on Article 10 (freedom of expression), the applicants complained of their criminal conviction for a satirical publication.

Violation of Article 10

Just satisfaction: EUR 920 each to Irina Grebneva and Nadezhda Alisimchik for pecuniary damage, EUR 3,000 each for non-pecuniary damage, and EUR 2,760 to both applicants jointly for costs and expenses

Ortsuyeva and Others v. Russia (nos. 3340/08 and 24689/10)

The applicants are 49 Russian nationals who were born between 1935 and 2003 and live in Mesker-Yurt and Grozny (Chechnya, Russia), and Komsomolskoye (Dagestan, Russia). They are all close relatives of 17 men who disappeared as a result of a large-scale sweeping operation conducted by Russian military forces in Mesker-Yurt between 21 May and 11 June 2002.

The applicants made the following claims about the operation. At the time, the village of Mesker-Yurt was under curfew. The Russian military forces had set up checkpoints on the roads leading to and from the settlement, and nobody was allowed to leave. The military servicemen then checked the residents' identity documents. After the check, the servicemen took the applicants' relatives away (as well as a number of other members of the village), under the pretext of needing to carry out further identity checks on them. They were taken to a temporary filtration camp outside of the village.

On 4 June 2002 the body of one of the applicants' relatives was thrown from a military vehicle on the outskirts of the village. The other 16 abducted men were transferred from the filtration camp to an unknown location. The applicants maintain that they have had no news of their missing relatives since. Between 9 and 17 June 2002, the military unit conducting the special operation left the place where they had been stationed, as well as the temporary filtration camp. On 17 June 2002, local residents went to the place where the military unit had been stationed. They stated that they found several pits with blown-up human remains.

Between June and July 2002, criminal investigations concerning the abductions were started by the Shali district prosecutor's office. They investigations were later joined into a single criminal case. From 2002 onwards, the case was repeatedly transferred between different government authorities, as well as being suspended and restarted. The applicants made repeated complaints to the authorities, but no investigation has been completed, and no criminal proceedings have been brought against any of the alleged perpetrators. The proceedings are still pending.

Relying on Article 2 (right to life), the applicants complained that their relatives had disappeared after having been detained by military servicemen during the security operation, and that the domestic authorities had failed to carry out effective investigations into the matter. Relying on Article 3 (prohibition of inhuman or degrading treatment), they complained of the mental suffering caused to them by the disappearance of their relatives. Relying on Article 5 (right to liberty and security), they complained of the unlawfulness of their relatives' detention. Finally, they relied on Article 13 (right to an effective remedy) to complain that there had been no domestic remedies available to them in relation to the alleged violations.

Violation of Article 2 (right to life) – in respect of the following applicants' relatives: Islam Ortsuyev, Adam Gachayev, Aslan Israilov, Anzor Israilov, Ibragim Askhabov, Shaip Makhmudov, Sayd-Magomed Abubakarov, Lechi Temirkhanov, Apti Dedishov, Abu Dedishov, Adam Dedishov, Suliman Magomadov, Salambek Magomadov, Vakha Ibragimov, Abu Dudagov, Adam Temersultanov and Magomedrasul Magomedov
Violation of Article 2 (investigation) – on account of the failure to investigate the killing of Adam Temersultanov and the disappearance of Islam Ortsuyev, Adam Gachayev, Aslan Israilov, Anzor Israilov, Ibragim Askhabov, Shaip Makhmudov, Sayd-Magomed Abubakarov, Lechi Temirkhanov, Apti Dedishov, Abu Dedishov, Adam Dedishov, Suliman Magomadov, Salambek Magomadov, Vakha Ibragimov, Abu Dudagov and Magomedrasul Magomedov
Violation of Article 3 – in respect of all the applicants,with the exception of Petimat Gachayeva and Khazh-Murad Magomadov, on account of their relatives' disappearance and the authorities' response to their suffering
Violation of Article 5
Violation of Article 13 in conjunction with Article 2 – in respect of all the applicants
Violation of Article 13 in conjunction with Article 3 – in respect of all the applicant whose complaints were declared admissible, with the exception of Petimat Gachayeva and Khazh-Murad Magomadov
Application no. 3340/08 **struck out from the list** in so far as it concerned the complaints of Zara Gachayeva and Zulay Gachayeva

Just satisfaction: See for details of the sums allocated to the applicants in respect of pecuniary and non-pecuniary damage, as well as costs and expenses, appendix II to the judgment.

Kerman v. Turkey (no. 35132/05)*

The applicant, Hüseyin Serhat Kerman, is a Turkish national who was born in 1962 and lives in Tekirdağ (Turkey).

The case concerned criminal proceedings which had taken place before the military courts and which had involved Mr Kerman, who had been a military doctor at the relevant time.

In 2005 the Elazığ military prosecutor's office questioned Mr Kerman as part of a preliminary investigation into suspicions of undue influence and rigging public calls for tender. On the same date Mr Kerman was heard by the three-judge Elazığ military court, which unanimously ordered that he be placed in detention, having regard to the existence of serious evidence of his guilt and to the need to maintain military discipline. His appeal against that detention order was dismissed. On 11 May 2005 the military prosecutor's office examined, of its own motion, the question of Mr Kerman's possible release. By an order of that same date, it ruled that it was appropriate to maintain the applicant in detention. Mr Kerman also submitted an application for release, which he sent to the prosecutor's office for transmission to the court. The court dismissed the request, having regard to the nature and seriousness of the offence, the period already spent in detention and the need to maintain strict military discipline.

On 30 June 2005 the prosecutor's office closed the investigation and drew up an indictment charging Mr Kerman with acts of undue influence and rigging public calls for tender, among other offences. Between 7 July and 3 August 2005 Mr Kerman submitted several requests for release to the military court. At the first hearing on 4 August 2005 the military court ordered Mr Kerman's release, holding that the grounds which had justified his placement in detention had ceased to exist. In 2009 the military court convicted Mr Kerman of abuse of office but held nevertheless that it was appropriate to suspend pronouncement of the judgment for a so-called probation period of five years. Mr Kerman lodged an appeal against that judgment. His appeal was dismissed.

Relying in particular on Article 5 § 3 (right to liberty and security), Mr Kerman complained that neither the judge nor the prosecutor who had ruled on his detention had been independent. Relying on Article 5 § 4 (right to speedy review of the lawfulness of detention), he alleged a violation of the right to appeal against his detention. Further relying on Article 5 § 5 (right to liberty and security), he complained that he had not had an effective remedy by which to obtain reparation.

Violation of Article 5 § 3
Violation of Article 5 § 4
Violation of Article 5 § 5

Just satisfaction: EUR 6,500 (non-pecuniary damage) and EUR 363 (costs and expenses)

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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.