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

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Judgments of 24 November 2015

The European Court of Human Rights has today notified in writing eight Chamber judgments[1], which are summarised below.

These judgments are available only in English.

Nenad Kovačević v. Croatia (application no. 38415/13)

The applicant, Nenad Kovačević, is a Croatian and Serbian national who was born in 1976 and is currently serving a prison sentence in Croatia. The case concerned his complaint about his pre-trial detention.

On 5 February 1997 Mr Kovačević was remanded in custody during a murder investigation in which he was a suspect. On 21 May 1997 he was released from custody and became unavailable to the Croatian authorities. On 8 February 1999, Mr Kovačević was found guilty of murder in his absence and sentenced to nine years' imprisonment. In July 2011 Mr Kovačević was arrested in Bosnia and Herzegovina and extradited to Croatia where he began to serve his prison sentence.

Mr Kovačević requested that the criminal proceedings against him be re-opened. This request was granted and on 4 October 2011 the execution of his sentence was stayed. On 5 October 2011 the court ordered Mr Kovačević's detention pending the re-trial holding that detention was necessary in order to avert the risk of absconding. Mr Kovačević appealed to the Supreme Court arguing, amongst other things, that the original indictment had not been served on him properly and that he had left Croatia for personal reasons. The Supreme Court dismissed his appeal against the detention order as ill-founded on 4 November 2011. The courts subsequently upheld Mr Kovačević's conviction in a final judgment of June 2013. His constitutional complaint challenging his conviction is currently still pending.

Relying in particular on Article 5 § 3 (right to liberty and security / entitlement to release pending trial) of the European Convention on Human Rights, Mr Kovačević complained that his pre-trial detention for six months following the re-opening of the criminal proceedings against him had been based on the misconception that he would abscond.

No violation of Article 5 § 3

Noreikienė and Noreika v. Lithuania (no. 17285/08)
Tunaitis v. Lithuania (no. 42927/08)

The applicants, Vytautas Tunaitis, Daina Noreikienė and Algirdas Noreika are Lithuanian nationals who were born in 1959, 1965 and 1961 and live in Kaunas and Ramučiai (Lithuania) respectively. These cases concerned the applicants' complaints that they had been deprived of their property without adequate compensation.

[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 the first case, the local authorities assigned in 1989 a plot of land measuring 0.03 hectares to Mr Tunaitis for the construction of a house. The city council confirmed the validity of that decision in 1991 and in 1994 Mr Tunaitis bought the land for a nominal price (approximately 28 euros (EUR)). In 2005, he signed a land purchase agreement and the plot was subsequently registered in the Land Registry in his name.

In the second case, the local authorities assigned in 1993 a plot of land measuring 1.97 hectares to Ms Noreikienė and Mr Noreika, a wife and husband, for individual farming. In 1996, the county administration authorised Ms Noreikienė to purchase the land for a nominal price (approximately EUR 1.7). In 2004 she signed a land purchase agreement and the plot was subsequently registered in the Land Registry in the couples' joint name.

In both cases a third party brought a civil claim seeking restoration of their ownership rights to the land arguing that they had already submitted requests for restitution of property and, as such, the land had been assigned and later sold to the applicants unlawfully. The plots in question were thus returned to the state and the applicants were awarded the equivalent of EUR 35 in the case of Mr Tunaitis and EUR 37 in the case of Ms Noreikienė and Mr Noreika. The applicants lodged cassation appeals which the Supreme Court refused to hear (in 2008 in the first case and in 2007 in the second case), holding that the appeals did not raise any important legal issues.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained that they had been deprived of their property by decisions of the domestic courts and that they had not received adequate compensation.

Violation of Article 1 of Protocol No. 1 – in both cases

Just satisfaction: In both cases the Court held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision and reserved it for examination at a later date

Paliutis v. Lithuania (no. 34085/09)

The applicant, Antanas Paliutis, is a Lithuanian national who was born in 1957 and lives in Vilnius. The case concerned Mr Paliutis' complaint that the domestic courts had failed to examine his principle request in proceedings he had brought for reclassification of a plot of land.

Mr Paliutis owned a 0.53 hectare plot of land in the village of Tarailiai (Tauragė Region). In 2005 he submitted a request to the local authorities to change the classification of his land. The district council granted his request and prepared the detailed area plan. On 25 November 2005 the county administration refused to approve the plan, as required by domestic law, on the ground that it had not been prepared in accordance with the domestic laws governing the planning process.

Mr Paliutis complained to the relevant Inspectorate which held that the county administration's refusal to approve the plan had been unfounded. The district council resubmitted the plans to the county administration which again refused to review the previous decision. In December 2006, the Inspectorate notified the county administration that its refusal to approve the plan had been unfounded and urged it to review its previous decision. No action was taken.

In January 2007 Mr Paliutis lodged a claim with the regional administrative court asking that the county administration be ordered to approve the plan. Following the court's suggestion, Mr Paliutis subsequently added a request to annul the decision of 25 November 2005. In May 2007, the court dismissed the claim for annulment of the decision and did not make any findings in respect of Mr Paliutis' original claim. Mr Paliutis then appealed the judgment to the Supreme Administrative Court arguing that the first-instance court had not examined his request that the county administration approve the plan. On 15 February 2008 the Supreme Administrative Court upheld the appeal and returned the case for re-examination by the court of first-instance. In October 2008, the

Regional Administrative Court dismissed the claim for annulment of the decision of 25 November 2005, holding that it had no competence to examine it, and did not address Mr Paliutis' claim that the county administration be ordered to approve the plan. In December 2008, the Supreme Court upheld this decision.

Relying on Article 6 § 1 (right to a fair hearing / access to court), Mr Paliutis complained that the domestic courts had failed to hear his case, refusing in particular to address his claim that the county administration be ordered to approve the detailed area plan.

Violation of Article 6 § 1

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

Paukštis v. Lithuania (no. 17467/07)

The applicant, Vytautas Alfonsas Paukštis, is a Lithuanian national, who was born in 1937 and lives in Vilnius. The case concerned his claim to the restoration of land previously belonging to his father.

In the 1930s Mr Paukštis' father bought a plot of 1.975 ha of land which is now part of the city of Vilnius. The property was nationalised in the 1940s. In 1991, Mr Paukštis asked the authorities to restore his rights to his father's land. At that time the maximum area of land returnable allowed under the Law on Restitution within the Vilnius city boundaries was 0.2 ha. Mr Paukštis was conferred a right to obtain a plot of 0.18 ha of his father's land to build an individual house and in September 1999 Mr Paukštis was transferred the ownership of the plot. In May 2001, part of the remaining land was transferred to a third party. This transfer of land was subsequently found to have been unlawful by the authorities and Mr Paukštis was offered compensation in accordance with a principle established in Lithuania from 1990 of restricted restitution (under which compensation at market value was not a possibility).

In April 2002 the Law on Restitution was amended to allow for a maximum restitution of 1ha within the Vilnius city boundaries. Mr Paukštis asked the authorities to return to him the remaining part of his father's plot to which he was entitled, namely 0.82 ha. The authorities concluded that the land could not be returned to Mr Paukštis as it had been built on and contained a forest of State importance.

Mr Paukštis initiated court proceedings claiming that the State should pay him the market value of the land transferred unlawfully to the third party as well as the market value of the unreturned land. On 15 June 2006 the Vilnius Regional Administrative Court dismissed the claim as unfounded holding that Mr Paukštis should be compensated for the remaining part of his father's land but not at market value, in accordance with the restricted restitution principle. On 15 February 2007 the Supreme Administrative Court upheld the lower court's decision underlining that no market value compensation for land being compulsorily bought by the State was provided for by law.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Paukštis complained that the State authorities had not restored his title to his father's land or fairly compensated him for that land. Furthermore, he complained about the length of the restitution process in his case.

Violation of Article 1 of Protocol No. 1 – on account of the authorities' decision to grant the part of the remaining land to a third party and the failure to provide adequate compensation
No violation of Article 1 of Protocol No. 1 – as regards Mr Paukštis's remaining complaints

Just satisfaction: EUR 46,900 (pecuniary damage), EUR 6,500 (non-pecuniary damage) and EUR 575 (costs and expenses)

Siništaj and Others v. Montenegro (nos. 1451/10, 7260/10, and 7382/10)

The applicants in this case are Anton Siništaj and Viktor Siništaj, Albanian nationals, Pjetar Dedvukaj, Djon Dedvuković, and Nikola Ljekočević, Montenegrin nationals, and Kola Dedvukaj and Rok Dedvukaj, US nationals of Albanian origin. They were born in 1959, 1964, 1968, 1946, 1980, 1948, and 1958 respectively. Anton Siništaj, Viktor Siništaj, Djon Dedvuković, and Nikola Ljekočević live in Podgorica (Montenegro), Pjetar Dedvukaj lives in Windsor (Canada), Kola Dedvukaj lives in Farmington Hills (USA), and Rok Dedvukaj lives in Troy (USA).

The case concerned the applicants' complaints of torture and ill-treatment by the police and the lack of an effective investigation into those complaints.

On 9 September 2006 a special anti-terrorist group arrested 17 people, including the applicants, on suspicion of associating for the purpose of anti-constitutional activities, preparing actions against the constitutional order and security of Montenegro and illegal possession of weapons and explosives.

On 11 and 12 September 2006, the applicants made statements before the investigating judge of the High Court complaining that from the moment of their arrest and during the following days in police detention they had been ill-treated with the aim of extorting statements. In particular, they allege that they were beaten, deprived of food, verbally abused and threatened by police officers. The judge noted these allegations in the interrogation minutes as well as a number of injuries on some of the applicants, including cuts, scratches and bruises. Mr P. Dedvukaj's injuries were also subsequently confirmed in a report by a prison doctor.

On 14 September 2006 five of the applicants filed a criminal complaint with the investigating judge against unknown police officers for extorting statements, torture and ill-treatment. On 17 November 2006 a report was issued finding that it could not confirm the accused officers' involvement in the alleged ill-treatment. However, all the relevant documents were submitted to the State Prosecutor for further consideration. To date it appears that the criminal complaints have not been processed.

On 5 August 2008, five of the applicants were found guilty of anti-constitutional activities and two of the applicants were found guilty of illegal possession of weapons and explosives by the High Court. Mr K. Dedvukaj and Mr R. Dedvukaj were convicted on the basis of Mr A. Siništaj's statement made at the police station and the contents of his diary, found during a search of his flat. The High Court also ruled that the search of Mr A. Siništaj's flat had been conducted in line with the relevant legal provisions and that his rights had not been breached in the pre-trial proceedings. The applicants' appeal against the judgment of the High Court was upheld by the Court of Appeals on 18 June 2009. That Court of Appeals held, in particular, that there had been no procedural violations in the first-instance proceedings and that the judgment against the applicants was based on legally valid evidence, namely Mr A. Siništaj's statement at the police station and evidence obtained during the search, notably his diary. On 25 December 2009, the Supreme Court endorsed the reasoning of the High Court and the Court of Appeals. Four of the applicants lodged constitutional appeals which were dismissed on 23 July 2014 by the Constitutional Court, which held that the complaints of torture and ill-treatment were unsubstantiated.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicants all complained that they had notably been ill-treated by police officers between 9 and 15 September 2006 and that the investigation into their complaints had been ineffective.

Violation of Article 3 (ill-treatment + investigation) – in respect of Pjetar Dedvukaj

Just satisfaction: EUR 3,000 (non-pecuniary damage) and EUR 3,500 (costs and expenses) to Pjetar Dedvukaj

Alexandrescu and Others v. Romania (no. 56842/08 and seven other applications)

The applicants, Carmen Doroteia Alexandrescu, Ion Băroiu, Iosif Bălaș-Salcoci, Ștefan Boran, Vladimir Ciobanu, Marin Dincă, Cristian Pațurcă, and Laura Veronica Stoica, are Romanian nationals who were born in 1950, 1958, 1939, 1957, 1948, 1938, 1964, and 1943 respectively and live in Bucharest.

These cases concerned the applicants' complaints about the criminal proceedings with regard to the military authorities' violent crackdowns on demonstrations in Bucharest.

Between 21 and 23 December 1989 the applicants took part in the anti-communist demonstrations in Bucharest which led to the fall of the communist regime. In 1990 the military prosecutor's office opened a criminal investigation in relation to the violent crackdown on these demonstrations. The applicants were interviewed at the military prosecutor's office as witnesses in connection with the military's use of violence against civilians. The applicants lodged criminal complaints and joined the criminal proceedings as civil parties. The criminal investigation is apparently still pending before the domestic authorities.

Between 13 and 15 June 1990 another violent crackdown took place against demonstrators, including the applicants, in Bucharest protesting against the newly installed government. Armed intervention by the military forces, joined by thousands of miners who had been transported to Bucharest, resulted in more than a thousand civilian casualties, of whom a hundred were killed. Criminal investigations into the crimes committed during the violent repression of the demonstrations were opened in 1990 and the applicants were joined to the criminal proceedings as civil parties. A decision not to bring a prosecution was adopted on 17 June 2009 and an appeal was dismissed on 3 September 2009 by the head prosecutor. These decisions have since been upheld by the High Court of Cassation and Justice.

Relying in particular on Article 6 § 1 (right to a fair trial within a reasonable time), the applicants complained that the length of the criminal proceedings concerning the events of December 1989, which they had joined as civil parties, had been unreasonable.

Violation of Article 6 § 1 (length of criminal proceedings)

Just satisfaction: EUR 2,400 (non-pecuniary damage) to each applicant

Verdeș v. Romania (no. 6215/14)

The applicant, Daniel Alin Verdeș, is a Romanian national who was born in 1977 and is currently detained in Timişoara Prison (Romania). The case concerned the conditions of his detention and his access to medical treatment.

On 10 May 2013, Mr Verdes was detained in prison following his conviction and five-year sentence for aggravated theft. Mr Verdes complains that he has been detained in overcrowded and squalid cells lacking sufficient air and light and that, despite being a non-smoker, he has been detained with smokers. Furthermore, Mr Verdes complains that he has not received adequate medical treatment, in particular, the appropriate medication for his HIV.

Relying in essence on Article 3 (prohibition of inhuman or degrading treatment) Mr Verdes complained in particular about the conditions of his detention.

Violation of Article 3 (conditions of detention)

Just satisfaction: EUR 4,950 (non-pecuniary damage)

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