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

Press Release
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ECHR 231 (2018)
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Judgments of 26 June 2018

The European Court of Human Rights has today notified in writing 12 judgments[1]:

seven Chamber judgments are summarised below; separate press releases have been issued for four other Chamber judgments in the cases of *Lakatos v. Hungary* (application no. 21786/15), *Pereira Cruz and Others v. Portugal* (nos. 56396/12, 57186/13, 52757/13, and 68115/13), *Gîrleanu v. Romania* (no. 50376/09), and *Telbis and Viziteu v. Romania* (no. 47911/15);

one Committee judgment, concerning issues which have already been submitted to the Court, can be consulted on *Hudoc* and does not appear in this press release.

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

D.R. v. Lithuania (application no. 691/15)

The applicant, Ms D.R., is a Lithuanian national who was born in 1958 and lives in the Tauragė region (Lithuania). She has a history of mental illness.

The case concerned her complaint that she had been taken for a psychiatric assessment and committed to a psychiatric hospital for one year against her will.

Proceedings were brought against her in 2013 for spraying a local teenager with tear gas. Given her medical history, the courts ordered a psychiatric assessment. The police enforced this order in April 2014. They drove her to a psychiatric centre in Klaipėda, having to handcuff her because she had struggled to get away. She was examined by two psychiatrists who concluded that she had a chronic mental disorder and recommended that she be admitted to a psychiatric hospital for compulsory inpatient treatment.

Referring to this psychiatric assessment in a judgment of July 2014, the Tauragė District Court found that the applicant could not be held criminally responsible for the tear gas incident and ordered her committal to a psychiatric hospital. The applicant appealed, complaining that the court had not heard her in person, had not ordered a fresh psychiatric assessment, despite the fact that she had been voluntarily undergoing outpatient treatment since June 2014, and had not assessed whether she posed a danger to society. She also complained about the police having taken her for psychiatric assessment without her consent. Her appeal was dismissed, the regional court essentially referring to the psychiatric assessment and finding that the applicant could not understand the danger posed by her medical condition or the need for treatment.

She was subsequently hospitalised for one year from November 2014.

The applicant made two complaints under Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights. First, she complained that the police had unlawfully deprived her of her liberty when taking her for the psychiatric assessment, arguing that she had not seen the court order and had had no idea of the reasons for it. Secondly, she alleged that her committal to a

[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

psychiatric hospital had also been unlawful, in particular because the domestic courts had not examined her in person.

Violation of Article 5 § 1 – on account of the deprivation of Ms D.R.'s liberty for the purpose of conducting a psychiatric assessment
Violation of Article 5 § 1 –on account of Ms D.R.'s involuntary psychiatric hospitalisation

Just satisfaction: 7,500 euros (EUR) (non-pecuniary damage)

Mocanu and Others v. the Republic of Moldova (no. 8141/07)*

The applicants, Victor Mocanu, Pavel Răducanu and Semion Mititelu, are Moldovan nationals who were born in 1951, 1935 and 1961 respectively. They were living in Sângera (Republic of Moldova) at the relevant time. Mr Mocanu and Mr Răducanu died in 2008 and 2013 respectively, and their children – Valentin Mocanu and Vera Braghiş respectively – expressed the wish to pursue the proceedings.

The case concerned the occupation by the State of agricultural land belonging to the applicants with a view to building a section of railway line that would run across Sângera.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention, the applicants alleged inter alia that the statutory procedure under the Expropriation Act had not been complied with.

Violation of Article 1 of Protocol No. 1

Just satisfaction: 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.

KIPS DOO and Drekalović v. Montenegro (no. 28766/06)

The applicants are KIPS DOO, a company based in Podgorica, and its founder and principal owner, Risto Drekalović, a Montenegrin national, who was born in 1952 and lives in Podgorica.

The case concerned the authorities' refusal to issue the applicants a building permit for a shopping centre.

In 1998 KIPS DOO obtained the right to use four plots of land on which it planned to build a shopping centre. Their request for a building permit was refused in 2006 because they had failed to meet two requirements, namely they had to buy the plot of land next to its own land under a revised urban plan and to pay the communal charges.

The applicants had earlier made a request to the local authorities to buy the adjacent plot of land and then, on not receiving a reply, had lodged an administrative appeal before the courts in 2005. The appeal was however dismissed because changes to urban planning were ongoing. The applicants then instituted an administrative dispute which is apparently still pending.

They had also requested that the relevant authorities calculate the communal charges for their plot of land. The request was refused because a construction ban was in force as long as urban planning changes were under way and the applicants had no building permit. In the ensuing judicial review proceedings, the commercial courts ruled in the applicants favour in 2006 and the authorities calculated the charges in 2008. By that time, however, the request for the building permit had been rejected due to non-payment of the charges.

Further proceedings for a building permit are currently still pending.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), the applicants complained about not being issued with a building permit in the first set of proceedings. They also

complained under Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy) about the length of the administrative proceedings to buy the adjacent plot of land and of the proceedings to enforce the commercial court judgment, as well as the lack of domestic remedies in that regard.

Violation of Article 6 § 1 (length of the administrative proceedings)
Violation of Article 13 taken together with Article 6 § 1
Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 1,500 to Mr Drekalović for non-pecuniary damage and EUR 7,500 to the applicants jointly for costs and expenses. The Court further held that the question of the application of Article 41 (just satisfaction) of the Convention in so far as pecuniary damage was concerned was not ready for decision and reserved it for examination at a later date.

S.C. Scut S.A. v. Romania (no. 43733/10)*

The applicant, S.C. Scut S.A., is a Romanian company which was set up in 1991 and whose registered office is in Constanţa (Romania). It mines sand extracted from the Danube in exchange for payment of a mining royalty. The case concerned the tax penalty imposed on the company for failing to pay sufficient mining royalties between 2007 and 2008.

In 2000 the applicant company obtained an operating licence from the National Agency for Mineral Resources in exchange for payment of a mining royalty fixed at 2% of the value of the sand extracted. The licence was not approved by the Romanian Government. Subsequently, a new Mining Act increased the mining royalty rates and instituted a differentiated regime between licences that had and licences that had not been approved by the Government before the Act came into force.

In 2007 a tax audit was carried out in respect of the applicant company, following which the Directorate-General of Public Finances concluded that between 2004 and 2006 it had properly complied with its tax obligations, including the 2% mining royalty. In 2009, following a second tax audit, the authorities concluded that between 2007 and 2008 the applicant company had wrongly calculated and paid the mining royalty, which should have been 6% between January and September 2007, and then 10% between October 2007 and September 2008. The Directorate-General therefore imposed a tax penalty on the applicant company of approximately 10,000 euros (EUR). The applicant company unsuccessfully appealed to the County Court and the Court of Appeal.

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant company alleged that the royalty specified in the licence and operating permit issued by the National Agency had been arbitrarily increased by the Directorate-General.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 14,200 (pecuniary damage) and EUR 1,400 (costs and expenses)

Fortalnov and Others v. Russia (nos. 7077/06, 35973/07, 7814/08, 25724/08, 49087/08, 61400/11, 70401/11, 5375/12, 10447/12, 30658/13, 63531/13, 2838/14, and 7442/15)

The 13 applicants are all Russian nationals who were born on various dates and live in different parts of the Russian Federation.

The applications concerned people who complained that they had been held in unrecorded detention.

The applicants were all held by the police for various periods ranging from seven to 83 hours before their arrest was officially recorded. The applicants also alleged that they ad been arrested at different times to those that had been officially recorded by the police.

The applicants complained under in particular Article 5 §§ 1 and 5 (right to liberty and security / right to compensation) that their unrecorded detention had been unlawful, that they had been unable to have it reviewed by a court and that it had not been possible to obtain compensation. Two of the applicants also complained under Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) that their detention had not been based on relevant and sufficient reasons.

Violation of Article 5 § 1 – in respect of all the applicants
Violation of Article 5 § 5 – in respect of all the applicants
Violation of Article 5 § 3 – in respect of Mr Abbasov and Mr Tsetiyev

Just satisfaction: For full details of the sums allocated to the applicants in this respect, see the table annexed to the judgment.

Mirković and Others v. Serbia (nos. 27471/15, 27288/15, 27751/15, 27779/15, 27790/15, 28156/15, 28418/15, 30893/15, 30906/15, 32933/15, 35780/15, 40646/15, and 55066/15)

The case concerned conflicting court decisions ruling at final instance on certain employment benefits for prison staff in Serbia. The applicants are 18 Serbian nationals who were/are all employed in various penal institutions.

From 2011 to 2013 the applicants, as well as many of their colleagues, lodged civil claims against the State asking for compensation for a four year long period in which they had been paid less than they were entitled to by the law. Some of the applicants were successful at first instance, whereas all of them were unsuccessful at second instance. In contrast, some of the applicants' colleagues were successful before the second instance courts and were awarded the compensation claimed.

The applicants appealed to the Constitutional Court complaining, among other things, that domestic courts adopting discordant decisions in similar cases was in breach of the right to legal certainty and the right to fair trial. The Constitutional Court rejected all the applicants' constitutional appeals as unsubstantiated.

The applicants alleged that the domestic courts' rejection of their civil claims, while at the same time ruling in favour of other claimants with identical complaints, had been in breach of their right to legal certainty guaranteed under Article 6 § 1 (right to a fair hearing).

Violation of Article 6 § 1 – in respect of Ms Mirković, Ms Sarić, Ms Maslovarić, Mr Vidić, Mr Nejković, Ms Pešić, Ms Jevremović, Mr Gradiška, Mr Veljković, Ms Stojanović, Ms Bijelić, Ms Vulević, Ms Jovanović and Mr Stepanović
Applications of Ms Popović-Radivojević, Mr Marković, Ms Bogićević and Mr Vučićević declared **inadmissible**

Just satisfaction: For full details of the sums allocated to the applicants in this respect, see the judgment.

Industrial Financial Consortium Investment Metallurgical Union v. Ukraine (no. 10640/05)

The applicant company, Industrial Financial Consortium Investment Metallurgical Union, is a Ukrainian joint venture based in Kyiv.

The case concerned domestic court decisions on the privatisation of a large steel company which were initially in favour of the applicant company, but which were subsequently overturned.

In June 2004 the applicant company was declared the winner of a privatisation bid for Kryvorizhstal, at the time one of the largest steel companies in the world. However, in 2005, after the election of a new Government, the authorities took the steel company back into State control and re-sold it to Mittal Steel Germany GmbH. In particular, the State based its decisions to overturn the first selloff process on commercial court decisions which had ruled that the initial privatisation had been flawed.

The commercial court decisions came after a rival Ukrainian bidder, Consortium Industrial Group, challenged the 2004 privatisation by the applicant company.

The commercial courts, by decisions in August and October 2004, rejected Consortium Industrial Group's claim. However, in February 2005 the Supreme Court allowed a belated appeal by the Prosecutor General's Office on behalf of the State, reopened the proceedings, quashed the earlier decisions and remitted the case for fresh examination. In April and June 2005 the commercial courts at first instance and on appeal annulled the first privatisation. The appeal court also eventually ordered that Kryvorizhstal's shares be seized in favour of the State.

The ordinary courts also at first, in August and December 2004, dismissed claims against the validity of the privatisation brought by Consortium Industrial Group and individuals. However, in February 2005 those decisions were overturned and the proceedings were reopened. They were eventually terminated in February 2008.

The applicant company complained in particular under Article 6 § 1 (right to a fair hearing) about the quashing of final decisions in its favour and the reopening of proceedings, about a violation of the principles of independence and impartiality and about allegedly inconsistent court decisions. Under Article 1 of Protocol No. 1 (protection of property) it alleged that the authorities had failed to ensure that it could benefit from its possessions, referring to various alleged shortcomings and inconsistencies in the domestic proceedings. It also alleged that it had been deprived of its assets because one of its owners had been in political opposition to the authorities.

Violation of Article 6 § 1 – concerning the complaints about the quashing of the final court decisions favourable to the applicant company in February 2005 and the breach of the guarantees of independence and impartiality in the proceedings before the commercial courts between February and August 2005
No violation of Article 1 of Protocol No. 1

Just satisfaction: The Court dismissed the applicant company's claim for just satisfaction.

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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.