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

Press Release
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ECHR 169 (2017)
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Judgments of 30 May 2017

The European Court of Human Rights has today notified in writing 15 judgments[1]:

11 Chamber judgments are summarised below;

separate press releases have been issued for four other judgments in the cases of *Davydov and Others v. Russia* (application no. 75947/11), *Trabajo Rueda v. Spain* (no. 32600/12), *N.A. v. Switzerland* (no. 50364/14), and *A.I. v. Switzerland* (no. 23378/15).

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

Muić v. Croatia (application no. 79653/12)

The applicant, Vladimir Muić, is a Croatian national who was born in 1948 and lives in Resetari (Croatia). He was dismissed from his job as a driver in 2000. The case concerned his complaint about the proceedings he had brought for unemployment benefit. In particular, the administrative authorities, including the Administrative Court, rejected Mr Muić's claim for unemployment benefit, finding that he had lodged it outside the time-limit provided for by law. Relying on Article 6 § 1 (right of access to court) of the European Convention on Human Rights, he complained that he had been unable to obtain a judicial determination of his claim because the authorities had calculated the time-limit in an excessively formalistic way.

No violation of Article 6 § 1 (access to court)

Ónodi v. Hungary (no. 38647/09)

The applicant, Gábor Ónodi, is a Hungarian national who was born in 1965 and lives in Szajol (Hungary). The case concerned contact rights with his daughter, born in 1994, following his divorce in 2006.

Following Mr Ónodi's divorce, there were seven court decisions over the next five years setting out contact arrangements, all authorising Mr Ónodi to have regular contact with his daughter. His ex-wife was granted custody. Difficulties already arose with those arrangements in 2006 and Mr Ónodi lodged an enforcement request with the guardianship authority. He subsequently lodged more than 60 such requests for enforcement of his contact rights. However, the guardianship authorities were unable to enforce the contact orders because of the mother's lack of cooperation and the child's negative attitude towards her father. Although the mother was fined on a number of occasions, Mr Ónodi continued to experience problems in having regular and uninterrupted contact with his daughter, notably between November 2008 and January 2010 and then in 2011 when there was no contact at all.

Relying on Article 8 (right to respect for private and family life), Mr Ónodi complained that the Hungarian authorities had failed to take effective steps to enforce his contact with his daughter.

[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

Violation of Article 8

Just satisfaction: 6,000 euros (EUR) (non-pecuniary damage) and EUR 1,900 (costs and expenses).

Apcov v. the Republic of Moldova and Russia (no. 13463/07)
Soyma v. the Republic of Moldova, Russia and Ukraine (no. 1203/05)
Vardanean v. the Republic of Moldova and Russia (no. 22200/10)

All three cases concerned arrests and criminal proceedings in the break-away "Moldavian Republic of Transdniestria (the "MRT").

Sergiu Apcov, the applicant in the first case, is a Moldovan national who was born in 1982 and lives in Tiraspol (in the "MRT"). In January 2005 he was arrested and detained in custody in the "MRT" on charges of robbery. He alleges that he was infected with HIV during this period of detention when a doctor used the same syringe on all inmates. He was released on bail in July 2005. He was subsequently convicted in August 2006 and sentenced to seven years' imprisonment which he served until April 2012. He had not apparently informed the Moldovan authorities about his detention in the "MRT" or about the related criminal proceedings.

Sergiy Soyma, the applicant in the second case, now deceased, was a Ukrainian national who used to live in Vinnytsya (Ukraine). He was arrested in the "MRT" in 2001 on charges of murder. He was convicted in 2002 in a final judgment by the "MRT" Supreme Court and sentenced to ten years' imprisonment. Both his mother and lawyer attempted to have him transferred to a Ukrainian prison, without success. In particular, his mother made about 40 requests to various Ukrainian official bodies to transfer her son; his lawyer made two requests for assistance from the Moldovan authorities. Neither Mr Soyma nor his mother apparently ever complained to the Moldovan authorities about any breach of his rights under the Convention. He was found hanged in prison in May 2006.

Ernest and Irina Vardanean, the applicants in the third case, are Moldovan nationals who were born in 1980 and live in Chisinau (Moldova). They are husband and wife and both journalists. In April 2010 Mr Vardanean, who was living at the time with his wife in the "MRT" and employed by a Russian news agency as well as a Moldovan newspaper, was arrested by the "MRT" secret services on charges of treason and/or espionage. He was convicted by a "MRT" tribunal in December 2010 and sentenced to 15 years' imprisonment. The Moldovan authorities made numerous attempts to secure Mr Vardanean's release, notably by informing various European bodies and the United States about the matter. They also initiated a criminal investigation into his arrest and detention, which was later discontinued; and, provided Mr Vardanean's family with financial support during his detention and a free apartment when he was released.

All three applicants complained in particular that their detention could not be considered "lawful" under Article 5 § 1 (right to liberty and security) of the European Convention because it had been ordered by the authorities of the "MRT", an unrecognised state. For the same reason, they all also argued that the "MRT" court that sentenced them could not be considered an "independent tribunal established by law" under Article 6 § 1 (right to a fair trial).

Mr Apcov made a number of other complaints under Article 3 (prohibition of inhuman or degrading treatment) about inadequate conditions of detention and medical care for his HIV during both his custody and imprisonment.

Mr Vardanean and his wife further complained about a search of their apartment, carried out when Mr Vardanean was arrested, and about restrictions on Ms Vardanean's visiting rights when her husband was in detention. They relied on Article 8 (right to respect for private and family life, the home, and the correspondence). Lastly, Mr Vardanean alleged that the "MRT" authorities had not

allowed his lawyers representing him in the proceedings before the European Court to have access to him in detention, in breach of Article 34 (right of individual petition).

- case of ***Apcov***:

No violation of Article 3 by the Republic of Moldova
Violation of Article 3 (inhuman and degrading treatment) by Russia
No violation of Article 5 § 1 by the Republic of Moldova
Violation of Article 5 § 1 by Russia
No violation of Article 6 § 1 by the Republic of Moldova
Violation of Article 6 § 1 by Russia

Just satisfaction: EUR 40,000 (non-pecuniary damage) and EUR 3,000 (costs and expenses), to be paid by Russia

- case of ***Soyma***:

No violation of Article 5 § 1 by the Republic of Moldova
Violation of Article 5 § 1 by Russia

The Court declared **inadmissible** the part of the application directed against Ukraine.

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 1,000 (costs and expenses), to be paid by Russia

- case of ***Vardanean***:

No violation of Article 5 § 1 by the Republic of Moldova
Violation of Article 5 § 1 by Russia, in respect of MrVardanean
No violation of Article 6 § 1 by the Republic of Moldova
Violation of Article 6 § 1 by Russia, in respect of Mr Vardanean
No violation of Article 8 by the Republic of Moldova
Violation of Article 8 by Russia, both with respect to the search of the applicants' apartment and the restriction of Ms Vardanean's right to visit Mr Vardanean while in detention
No violation of Article 34

Just satisfaction: EUR 30,000 to Mr Vardanean and EUR 7,000 to Ms Vardanean for non-pecuniary damage, and EUR 4,000 jointly to both applicants for costs and expenses, to be paid by Russia.

Grecu v. the Republic of Moldova (no. 51099/10)

The applicant, Tatiana Grecu, is a Moldovan national who was born in 1960 and is detained in Vadul lui Voda (the Republic of Moldova). The case concerned her complaint that she had been unlawfully detained and subjected to police brutality for almost ten hours.

Ms Grecu was arrested in the early hours of the morning on 22 February 2002, but released later the same day after a court found that her detention had been abusive. She subsequently lodged a criminal complaint against the police accusing them of punching and strangling her during her detention; the complaint was unsuccessful. However, in civil proceedings she brought against the State, the domestic courts acknowledged that there had been a breach of her rights under the European Convention, on account of her unlawful detention, ill-treatment and the inadequacy of the criminal investigation into her complaints. She was awarded 3,200 euros (EUR).

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) and Article 5 § 1 (right to liberty and security), Ms Grecu reiterated her complaints of unlawful detention, ill-treatment and the ineffective investigation into her complaints, arguing that the compensation she had been awarded had been inadequate.

Violation of Article 3 (treatment)
Violation of Article 3 (investigation)
Violation of Article 5 § 1

Just satisfaction: EUR 11,800 (non-pecuniary damage) and EUR 840 (costs and expenses).

Scavetta v. Monaco (no. 33301/13)*

The applicant, Mr Giuseppe Scavetta, is an Italian national who was born in 1955 and lives in Monaco.

The case concerned a failure to communicate to the Review Court a report by the reporting judge and the written conclusions of the representative of the prosecutor's office.

In 2005 Mr Scavetta advised some longstanding acquaintances of his (A.A., F.A. and M.T.) to purchase a French company manufacturing costume jewellery through the intermediary of a holding company, "FH Finances", which he invited them to set up. The individuals in question, together with Mr Scavetta, duly set up the FH Finances company with its head office in France and X.B. as its president. In July 2006 FH Finances bought up all the shares in the jewellery manufacturing company. In November 2007 A.A., F.A., M.T. and FH Finances lodged a complaint, together with an application to join the proceedings as civil parties, against Mr Scavetta for misappropriation and fraud.

A judicial investigation was instigated.

In June 2011 a Monegasque investigating judge of Monaco gave a decision declining jurisdiction, and ordered the partial termination of the proceedings. The judge only examined the facts relating to embezzlement perpetrated in favour of the Monegasque company IET, which was responsible for managing, from its Monaco head office, the other two companies based in France. Mr Scarvetta was brought before the criminal court for misappropriation. By judgment of 17 January 2012 the Monaco Criminal Court found that Mr Scarvetta had never provided any documentary evidence of the expenditure which had allegedly been incurred and that a sum of EUR 25,000 had been paid into his personal account, solely for his own benefit. The court found him guilty and sentenced him to one year's imprisonment. Mr Scarvetta and the public prosecutor appealed against that judgment. The Court of Appeal upheld it, although it reduced the sentence. Mr Scarvetta lodged an appeal on points of law.

The Prosecutor General submitted his conclusions on 3 December 2012. On 5 December 2012 the registry sent a copy of those conclusions to the First President of the Review Court, the reporting judge and two Monegasque lawyers, Mr C. Lecuyer and Mr G. Gazo, in their capacity as "avocats-défenseurs" (defence lawyers). In accordance with usual practice in the Review Court, a reporting judge drew up a report for the members of the Review Court, subject to secrecy of the deliberations. By judgment of 24 January 2013 the Review Court dismissed Mr Scarvetta's appeal on points of law. The judgment explicitly concerned Mr Scarvetta, mentioning that he had "appeared in person, defended by the litigation lawyer Mr Gaston Carrasco, practising in Nice" and citing the names of the parties claiming damages in the proceedings and their representative, Mr Gazo, "avocat-défenseur" with the Court of Appeal.

Relying in particular on Article 6 § 1 (right to a fair trial), the applicant complained of the failure to communicate to the Review Court a report by the reporting judge and the written conclusions of the representative of the prosecutor's office.

Violation of Article 6 § 1

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary prejudice sustained by Mr Scarvetta. It awarded him EUR 3,000 for costs and expenses.

Just Satisfaction

Żuk v. Poland (no. 48286/11)

The applicant, Danuta Bronisława Żuk, is a Polish national who was born in 1951 and lives in Szczecin (Poland).

The case concerned Ms Żuk's claim to purchase two plots of state-owned land and the non-enforcement of a final judgment in her favour with regard to that claim.

By an administrative decision of November 1989 the Szczecin Town Council held that Ms Żuk's husband was entitled to purchase plots of land owned by the State Treasury. The Town Council was obliged to sell the land to him on the basis of that decision. This entitlement was confirmed in another administrative decision in March 1990.

However, the Szczecin municipality refused to transfer ownership of the land to Ms Żuk and her husband as the land they wished to claim had been designated for non-agricultural purposes under a new land development plan. Notably, on 16 May 1994 the municipality had adopted a local land development plan which provided that land situated within the administrative limits of the municipality was designated for non-agricultural purposes.

In April 2003, Ms Żuk and her husband lodged a civil action against the Szczecin municipality requesting the court to oblige it to sell the land to which they were entitled on the basis of the 1989 decision. The Szczecin District Court dismissed the claim. However, in September 2004 Ms Żuk and her husband were successful on appeal to the Szczecin Regional Court which allowed the claim and obliged the municipality to sell them the land concerned. That court notably found that the 1989 administrative decision created a right to buy the plot of land concerned and that the legal reform of 1990 did not affect the validity of Ms Żuk's claim. This decision, which became final, was not implemented and, in 2008, Ms Żuk and her husband initiated further civil proceedings seeking to have their rights realised. These proceedings were unsuccessful.

In its judgment on the merits of 6 October 2015 the Court found violations of Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 1 of Protocol No. 1 (protection of property).

Today's judgment concerned the question of the application of Article 41 (just satisfaction) of the Convention as regards pecuniary damage.

Just satisfaction: EUR 40,000 (pecuniary damage).

Just Satisfaction

S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania (no. 27227/08)

The applicants, S.C. Antares Transport S.A. and S.C. Transroby S.R.L., are Romanian commercial transport companies based in Râmnicu-Vâlcea (Romania). The case concerned the withdrawal of their transport licences.

Following a decision by the local county council in April 2005 adopting a new programme of passenger transport, a public tender took place and the applicant companies acquired licences to provide passenger transport services on a group of seven routes in their local area for a period of three years. However, shortly afterwards two companies which lost their licences for one of the routes in that tender asked the courts to annul the decision of April 2005. In February 2006 the County Court found that the county council had acted arbitrarily by limiting access for other

competitors in the public transport market and ordered the council to call a new public tender for the route in question as an individual route. The first applicant company's appeal on points of law was subsequently rejected and, on 6 July 2006, the county council put out to public tender all seven routes as individual routes. As a result, on 26 July 2006 the applicant companies were informed that they had to hand over their licences for the entire group of seven routes.

The applicant companies lodged two sets of administrative proceedings requesting the annulment of the county council's decision of 6 July 2006 and of the decision of 26 July 2006 to withdraw the licences, without success.

In its judgment on the merits of 15 December 2015 the Court found a violation of Article 1 of Protocol No. 1 (protection of property).

Today's judgment concerned the question of the application of Article 41 (just satisfaction) of the Convention.

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

Vladimir Nikolayevich Fedorov v. Russia (no. 48974/09)

The case concerned the remand in custody of the head of the pharmacology department at the medical academy in Yaroslavl.

Vladimir Fedorov, the applicant, was born in 1957 and lives in Yaroslavl. He was remanded in custody from February to September 2009 on suspicion of bribe-taking. The grounds for keeping him in custody over this six-month period were the seriousness of the charges against him and the risk of him interfering with the investigation by putting pressure on witnesses, namely his students, or destroying evidence. As soon as the pre-trial investigation was completed and the charges against him were finalised in September 2009, he was released against an undertaking not to leave his place of residence. He was ultimately convicted of 26 counts of bribe-taking and given a conditional sentence of four years and six months' imprisonment. He was dismissed from his post at the academy during the proceedings against him.

Relying on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr Fedorov alleged that his remand in custody had not been sufficiently justified. He also complained under Article 8 (right to respect for private and family life) that he had been denied the right to see his family throughout his pre-trial detention.

No violation of Article 5 § 3
Violation of Article 8

Just satisfaction: EUR 6,000 (non-pecuniary damage).

Revision

Kavaklıoğlu and Others v. Turkey (no. 15397/02)*

This request for revision concerned a judgment by the European Court of Human Rights relating to an application lodged by 74 Turkish nationals, including the late Mr Mahir Emsalsiz, concerning an anti-riot operation conducted on 26 September 1999 in Ulucanlar Central Prison in Ankara.

Relying, in particular, on Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment), some of the applicants submitted that their relatives had been killed by the security forces in breach of their right to life, while others complained of the ill-treatment which they had suffered during and after the operation. The applicants also complained that the investigations conducted had been inadequate and ineffective.

In a judgment of 6 October 2015, the Court found that in the light of the circumstances of the anti-riot operation on 26 September 1999, there had been a substantive and procedural violation of Article 2 of the Convention in respect of the late Mr Mahir Emsalsiz, among others. It awarded Ms Mehiyet Emsalsiz (the deceased's mother) the sum of 50,000 euros (EUR) in respect of non-pecuniary damage.

On 3 January 2017 the applicants' lawyer, Mr Kazım Bayraktar, informed the registry of Ms Mehiyet Emsalsiz's death on 5 February 2015. Consequently, he requested the revision of the judgment pursuant to Rule 80 of the Rules of Court and the designation of the late Ms Mehiyet Emsalsiz's four heirs as beneficiaries of the award made in respect of just satisfaction.

In its judgment today the Court **decided to revise its judgment** of 6 October 2015 as regards the question of the application of Article 41 (just satisfaction) of the Convention.

Just satisfaction: EUR 50,000 jointly to Erdal Kaya, Dönsel Kaya, Emsal Özdemir (Kaya) and Derya Ekinci (Emsalsiz), in respect of non-pecuniary damage.

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