

Press release issued by the Registrar

CASES ACCEPTED FOR REFERRAL TO THE GRAND CHAMBER

The following cases have been referred to the Grand Chamber of the European Court of Human Rights:

- *Oršuš and Others v. Croatia* (application no. 15766/03);
- *Gäfgen v. Germany* (no. 22978/05);
- *Kart v. Turkey* (no. 8917/05);
- *Medvedyev and Others v. France* (no. 3394/03).

At its last meeting, the Grand Chamber panel of five judges accepted the above cases for referral to the Grand Chamber, under Article 43¹ of the European Convention on Human Rights. The panel also adjourned one case:

- *Foka v. Turkey* (no. 28940/95).

Judgments in a further 67 cases, listed at the end of the press release, are now final², after requests for them to be referred to the Grand Chamber were rejected.

The text of the Chamber judgments and corresponding press releases are available on the Court's Internet site: <http://www.echr.coe.int>.

1. Cases accepted by the Grand Chamber

Oršuš and Others v. Croatia

The applicants are 14 Croatian nationals of Roma origin: Mirjana Oršuš, Gordan Oršuš, Dejan Balog, Siniša Balog, Manuela Kalanjoš, Josip Oršuš, Biljana Oršuš, Smiljana Oršuš, Branko Oršuš, Jasmina Bogdan, Josip Bogdan, Dijana Oršuš, Dejan Oršuš and Danijela Kalanjoš. They were born between 1988 and 1994 and all live in Orehovica, Podturen and Trnovec in northern Croatia.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber shall become final when the panel of the Grand Chamber rejects the request to refer under Article 43.

The case concerned the applicants' complaint that they were segregated at primary school into Roma-only classes.

The applicants started primary school in the villages of Macinec, Podutren and Orehovica between the years 1996 and 2000. During their elementary schooling, the first nine applicants attended both Roma-only and mixed classes before leaving school at the age of 15; the remaining five applicants are still at school and attend entirely Roma-only classes. Most of the applicants were provided with additional classes in Croatian and participated in mixed group extra-curricular activities organised by their respective schools.

In April 2002 the applicants brought proceedings against their primary schools. They claimed that the Roma-only curriculum in their schools had 30% less content than the official national curriculum. They alleged that that situation was racially discriminating and violated their right to education as well as their right to freedom from inhuman and degrading treatment. They also submitted a psychological study of Roma children who attended Roma-only classes in their region which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity.

In September 2002 Čakovec Municipal Court dismissed the applicants' complaint. It found that the reason why most Roma pupils were placed in separate classes was that they needed extra tuition in Croatian. Furthermore, the curriculum at Podturen and Macinec Elementary schools was the same as that used in parallel classes in those schools. Consequently, the applicants had failed to substantiate their allegations concerning racial discrimination. The applicants' complaint was also subsequently dismissed on appeal.

The applicants' constitutional complaint, lodged in November 2003, was dismissed on similar grounds in February 2007.

The Government submitted statistics for the year 2001 which showed that only Macinec Elementary School had a majority of Roma pupils attending Roma-only classes; the other two schools' proportion of Roma pupils attending such classes was below 50%. This proved that it was not a general policy in the applicants' schools to automatically place Roma pupils in separate classes.

The applicants claimed, however, that they were told to leave school at 15 and that the discrimination they suffered was borne out by certain statistics such as, in the school year 2006/2007, the drop-out rate of Roma pupils at primary school was 84 %, in comparison to a 9 % drop-out rate with regard to the general elementary school population in their county.

The applicants allege that their segregation into Roma-only classes at school deprived them of their right to education in a multicultural environment and made them endure severe educational, psychological and emotional harm, and in particular feelings of alienation and lack of self-esteem. They also complain about the excessive length of the proceedings they brought before the civil courts concerning those complaints. They rely, in particular, on Article 3 (prohibition of inhuman or degrading treatment), Article 6 § 1 (right to a fair hearing within a reasonable time), Article 2 of Protocol No. 1 (right to education) and Article 14 (prohibition of discrimination).

In a judgment of 17 July 2008, the Court held, unanimously that there had been no violation of Article 2 of Protocol No. 1 (right to education) to the European Convention on Human Rights taken alone or in conjunction with Article 14 (prohibition of discrimination) concerning the applicants' complaint that they were placed in Roma-only classes at primary school; and, a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) of the Convention concerning the excessive length of the proceedings brought by the applicants before the Constitutional Court with regard to their complaint. Under Article 41 (just satisfaction), the Court awarded the applicants 1,300 euros (EUR) each in respect of non-pecuniary damage and EUR 2,000, jointly, for costs and expenses.

On 1 December 2008, the case was referred to the Grand Chamber at the applicants' request.

Gäfgen v. Germany

The applicant, Magnus Gäfgen, is a German national who was born in 1975. He is currently in prison in Schwalmstadt (Germany).

The case concerned Mr Gäfgen's complaint, in particular, that he was threatened with ill-treatment by the police in order to make him confess to the whereabouts of J., the youngest son of a well-known banking family in Frankfurt am Main, and that the ensuing trial against him was not fair.

In July 2003 Mr Gäfgen was sentenced to life imprisonment for the abduction and murder of J.. The court found that his guilt was of a particular gravity, meaning that the remainder of his prison sentence cannot be suspended on probation after 15 years of detention.

The child, aged 11, had got to know the applicant, who at the time was a law student, through his sister. On 27 September 2002 the applicant lured J. into his flat by pretending that J.'s sister had left a jacket there. He then suffocated the child.

Subsequently, the applicant deposited a ransom demand at J.'s parents' home, requiring them to pay one million euros to see their child again. He abandoned J.'s corpse under the jetty of a pond one hour's drive away from Frankfurt.

On 30 September 2002 at around 1 a.m. Mr Gäfgen collected the ransom at a tram station. He was placed under police surveillance and was arrested by the police several hours later.

On 1 October 2002 one of the police officers responsible for questioning Mr Gäfgen, on the instructions of the Deputy Chief of Frankfurt Police, warned the applicant that he would face considerable suffering if he persisted in refusing to disclose the child's whereabouts. They considered that threat necessary as J.'s life was in great danger from lack of food and the cold. As a result of those threats, the applicant disclosed where he had hidden the child's body. Following that confession, the police secured further evidence, notably the tyre tracks of the applicant's car at the pond and the corpse.

At the outset of the criminal proceedings against the applicant, Frankfurt am Main Regional Court decided that all his confessions made throughout the investigation could not be used as evidence at trial as they had been obtained under duress, in breach of Article 136a of the Code of Criminal Procedure and Article 3 of the European Convention. However, the regional court did allow the use in the criminal proceedings of evidence obtained as a result of the statements extracted from the applicant under duress.

Ultimately, on 28 July 2003 the applicant was found guilty of abduction and murder and was sentenced to life imprisonment. It was found that, despite the fact that the applicant had been informed at the beginning of his trial of his right to remain silent and that all his earlier statements could not be used as evidence against him, he nevertheless again confessed that he had kidnapped and killed J. The court's findings of fact concerning the crime were essentially based on that confession. They were also supported by: the evidence secured as a result of the first extracted confession, namely the autopsy report and the tyre tracks at the pond; and, other evidence obtained as a result of the applicant being observed after he had collected the ransom money, later discovered in his flat or paid into his accounts.

The applicant lodged an appeal on points of law which was dismissed by the Federal Court of Justice on 21 May 2004. He subsequently lodged a complaint with the Federal Constitutional Court, which on 14 December 2004 refused to examine it. That court confirmed the regional court's finding that threatening the applicant with pain in order to extract a confession from him constituted a prohibited method of interrogation under domestic law and violated Article 3 of the Convention.

On 20 December 2004 the two police officers involved in threatening the applicant were convicted of coercion and incitement to coercion while on duty and were given suspended fines.

On 28 December 2005 the applicant applied for legal aid in order to bring official liability proceedings against the *Land* of Hesse to obtain compensation for being traumatised by the investigative methods of the police. Those proceedings are currently still pending.

The applicant complains that he was subjected to torture when questioned by the police. He further submits that his right to a fair trial was violated notably by the use at his trial of evidence secured as a result of his confession obtained under duress. He relies on Articles 3 (prohibition of torture) and 6 (right to a fair trial).

In a judgment of 30 June 2008, the Court held, by six votes to one, that the applicant might no longer claim to be the victim of a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights; and, that there had been no violation of Article 6 (right to a fair trial) of the Convention.

On 1 December 2008, the case was referred to the Grand Chamber at the applicant's request.

Kart v. Turkey

The case concerned Mr Kart's complaint that he could not defend his name in criminal proceedings against him because, as a member of parliament (MP), he was subject to parliamentary immunity.

In the parliamentary elections of 3 November 2002 he was elected to the Turkish National Assembly as a member of the People's Republican Party (CHP).

Prior to his election he practised as a lawyer and, in the course of his professional activities, two sets of criminal proceedings were brought against him, one for insulting a lawyer and the other for insulting a public official.

As an MP he enjoyed parliamentary immunity. Under Article 83 of the Turkish Constitution, no MP suspected of having committed an offence before or after his election could be arrested, questioned, detained or prosecuted unless the National Assembly decided to lift his immunity.

The applicant requested that his immunity be lifted, but the joint committee of the Assembly decided to stay the proceedings against him until the end of his term of office. The applicant objected, relying on his right to a fair hearing. The files concerning the applicant's request to have his immunity lifted remained on the agenda of the plenary Assembly for over two years, until the following elections, without ever being examined.

Mr Kart was re-elected in the parliamentary elections of 22 July 2007. In January 2008 the Speaker of the National Assembly informed him that the files concerning the lifting of his immunity were pending before the joint committee.

The applicant alleges in particular that the failure to lift his parliamentary immunity had prevented criminal proceedings from being brought against him, thereby denying him the right of access to a court, guaranteed under Article 6 § 1, and the opportunity to clear his name.

In a judgment of 8 July 2008, the Court held, by four votes to three that there had been a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.

On 1 December 2008, the case was referred to the Grand Chamber at the government's request.

Medvedyev and Others v. France

The applicants are Oleksandr Medvedyev and Borys Bilenikin, Ukrainian nationals, Nicolae Balaban, Puiu Dodica, Nicu Stelian Manolache and Viorel Petcu, Romanian nationals, Georgios Boreas, a Greek national, and Sergio Cabrera Leon and Guillermo Luis Eduar Sage Martinez, Chilean nationals. They were crew-members of the *Winner*, a cargo vessel flying the flag of Cambodia.

As part of an international operation against drug trafficking, the French authorities were informed that the ship was likely to be carrying significant quantities of narcotics. In consequence, the maritime authorities apprehended it on the high seas, in the waters off Cap Verde, then towed it to Brest harbour (France). The applicants claimed to have been the victims of an arbitrary deprivation of liberty on account of being detained on board the *Winner* for 13 days under the surveillance of the French armed forces, then in police custody – two days for some of them, three days for the others – on their arrival in Brest.

Relying on Article 5 § 1 (right to liberty and security), they complain that that deprivation of liberty had been unlawful, particularly in the light of international law. Under Article 5 § 3 (right to liberty and security), they also complain that they had waited 15 to 16 days to be brought before “a judge or other officer authorised by law to exercise judicial power”.

In a judgment of 10 July 2008, the Court held that the applicants had not been deprived of their liberty in accordance with a procedure prescribed by law and consequently held, unanimously, that there had been a violation of Article 5 § 1. However, considering that the

length of that deprivation of liberty had been justified by the “wholly exceptional circumstances” of the case, in particular the inevitable delay entailed by having the *Winner* tugged to France, the Court concluded, by four votes to three, that there had not been a violation of Article 5 § 3. It held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants, and awarded them EUR 5,000 jointly for costs and expenses.

On 1 December 2008, the case was referred to the Grand Chamber at the government’s and applicants’ request.

2. Cases rejected by the Grand Chamber

Xheraj v. Albania (no 37959/02), judgment of 29 July 2008.

Ashughyan v. Armenia (no 33268/03), judgment of 17 July 2008.

N.N. and T.A. v. Belgium (no 65097/01), judgment of 13 May 2008.

Van Ingen v. Belgium (no 9987/03), judgment of 13 May 2008.

Rodić and Others v. Bosnia-Herzegovina (no 22893/05), judgment of 27 May 2008.

Kraztev v. Bulgaria (no 29802/02), judgment of 24 July 2008.

Ismeta Bačić v. Croatia (no 43595/06), judgment of 19 June 2008.

Krnić v. Croatia (no 8854/04), judgment of 31 July 2008.

Nikolac v. Croatia (no 17117/06), judgment of 10 July 2008.

X. v. Croatia (no 11223/04), judgment of 17 July 2008.

Blandeau v. France (no 9090/06), judgment of 10 July 2008.

Elezi v. Germany (no 26771/03), judgment of 12 June 2008.

Ichtigiaroglou v. Greece (no 12045/06), judgment of 19 June 2008.

Sossoadouno v. Greece (no 29845/06), judgment of 31 July 2008.

Lambadaridou v. Greece (no 42150/06), judgment of 5 June 2008.

Meïdanis v. Greece (no 33977/06), judgment of 22 May 2008.

Zourdos and Others v. Greece (no 24898/06), judgment of 5 June 2008.

Lajos Kovács v. Hungary (no 8174/05), judgment of 17 July 2008.

De Pace v. Italy (no 22728/03), judgment of 17 July 2008.

Matteoni v. Italy (no 65687/01), judgment of 7 July 2008.

Ādamsons v. Latvia (no 3669/03), judgment of 24 June 2008.

Orr v. Norway (no 31283/04), judgment of 15 May 2008.

Bobrowski v. Poland (no 64916/01), judgment of 17 June 2008.

Karpow v. Poland (no 3429/03), judgment of 26 February 2008.

Miroslav Jabłoński v. Poland (no 33985/05), judgment of 8 July 2008.
Panusz v. Poland (no 24322/02), judgment of 3 June 2008.
Przepalkowski v. Poland (no 23759/02), judgment of 22 July 2008.
Roman Wilczyński v. Poland (no 35840/05), judgment of 17 July 2008.
Sienkiewicz v. Poland (no 25668/03), judgment of 27 May 2008.

Crețu and Others v. Romania (nos 34877/02), judgment of 8 July 2008.
Deak v. Romania and United Kingdom (no 19055/05), judgment of 3 June 2008.
Elena Negulescu v. Romania (no 25111/02), judgment of 1st July 2008.
Mișcarea Producătorilor Agricoli Pentru Drepturile Omului v. Romania (no 34461/02), judgment of 22 July 2008.
Mitrea v. Romania (no 26105/03), judgment of 29 July 2008.
Petrea v. Romania (no 4792/03), judgment of 29 April 2008.
SC Maroloux and Jacobs v. Romania (no 29419/02), judgment of 21 February 2008.
Temeșan v. Romania (no 36293/02), judgment of 10 June 2008.
Vitan v. Romania (no 42084/02), judgment of 25 March 2008.

Atabayeva and Others v. Russia (no 26064/02), judgment of 12 June 2008.
Akhiyadova v. Russia (no 32059/02), judgment of 3 July 2008.
Belotserkovets v. Russia (no 34679/03 judgment of 3 July 2008.
Betayev and Betayeva v. Russia (no 37315/03), judgment of 29 May 2008.
Chember v. Russia (no 7188/03), judgment of 3 July 2008.
Elmurzayev and Others v. Russia (no 3019/04), judgment of 12 June 2008.
Gekhayeva and Others v. Russia (no 1755/04), judgment of 29 May 2008.
Ibragimov and Others v. Russia (no 34561/03), judgment of 29 May 2008.
Isigova and Others v. Russia (no 6844/02), judgment of 26 June 2008.
Ismoilov and Others v. Russia (no 2947/06), judgment of 24 April 2008.
Kaplanova v. Russia (no 7653/02), judgment of 29 April 2008.
Martynova v. Russia (no 57807/00), judgment of 26 June 2008.
Moroko v. Russia (no 20937/07), judgment of 12 June 2008.
Musayeva v. Russia (no 12703/02), judgment of 3 July 2008.
Petukhov v. Russia (no 40322/02), judgment of 26 June 2008.
Ruslan Umarov v. Russia (no 12712/02), judgment of 3 July 2008.
Sangariyeva and Others v. Russia (no 1839/04), judgment of 29 May 2008.
Seleznev v. Russia (no 15591/03), judgment of 26 June 2008.
Shulepov v. Russia (no 15435/03), judgment of 26 June 2008.
Sudarkov v. Russia (no 3130/03), judgment of 10 July 2008.
Utsayeva and Others v. Russia (no 29133/03), judgment of 29 May 2008.

Cvetković v. Serbia (no 17271/04), judgment of 10 June 2008.

Manevski v. « the former Yugoslav Republic of Macedonia » (no 22742/02), judgment of 19 June 2008.

Çamdereli v. Turkey (no 28433/02), judgment of 17 July 2008.
Demades v. Turkey (no 16219/90), judgment of 22 April 2008.
Kuş v. Turkey (no 27817/04), judgment of 8 July 2008.
Sakarya v. Turkey (no 11912/04), judgment of 20 May 2008.

Gayevskaya v. Ukraine (no 9165/05), judgment of 24 July 2008.

Lesina v. Ukraine (no 9510/03), judgment of 19 June 2008.

Further information about the Court can be found on its Internet site (<http://www.echr.coe.int>)³.

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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.

³ These summaries by the Registry do not bind the Court.