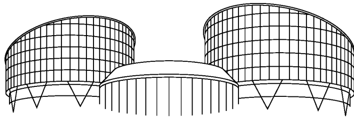

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 266 (2014)
25.09.2014

Forthcoming judgments

The European Court of Human Rights will be notifying in writing three judgments on Tuesday 30 September 2014 and 14 on Thursday 2 October 2014.

*Press releases and texts of the judgments will be available at **10 a.m.** (local time) on the Court's Internet site (www.echr.coe.int)*

Tuesday 30 September 2014

Anzhelo Georgiev and Others v. Bulgaria (application no. 51284/09)

The case concerns an allegation of excessive use of police force, and in particular the use of electroshock weapons by police officers.

The applicants, Anzhelo Georgiev, Kamelia Dekova, Georgi Kosev, Nikolay Dragnev, and Pavel Tsekov, are Bulgarian nationals who were born in 1973, 1972, 1986, 1978, and 1978 respectively. They all worked for a private company based in Varna (Bulgaria), one of the city's main Internet service providers.

The applicants submit, in particular, that they were ill-treated by armed, masked police officers during a special police operation carried out at their company's offices on 18 June 2008 in order to search and seize illegal software. All five applicants allege that the police broke into two of the company's offices and, forcing the employees to lie on the ground, hit, kicked and applied electroshock weapons on some of them causing strong pain and paralysis.

Following a complaint brought by the applicants, a preliminary inquiry was immediately opened. In October 2008 the prosecuting authorities decided not to prosecute the police officers involved in the incident, concluding that the employees had disobeyed the officers' orders to lie on the ground and not touch anything and that the force used had therefore been justified by the need to prevent the destruction of electronic evidence contained in the company's computers. This decision was upheld on appeal in April 2009.

The applicants complain that the police officers used excessive force against them, when they had not in any way disobeyed, resisted or provoked the police officers' violent behaviour. They also allege that the authorities' ensuing investigation into their complaints was ineffective. They rely in particular on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

Prezhdarovi v. Bulgaria (no. 8429/05)

The applicants, Rumen Prezhdarov, a Bulgarian national, and Anna Prezhdarova, a Russian national, husband and wife, were born in 1968 and 1965 respectively and live in Pazardzhik (Bulgaria). The case concerns the police search of the couple's computer club and the seizure of five computers.

On 21 February 2005 the police searched Mr Prezhdarov's computer club which was located in a garage he owned with his wife. Mr Prezhdarov ran the club with his wife, renting the computers to clients. The inspection was ordered by the prosecuting authorities on the suspicion that the couple had installed games on the computers they rented to their clients without the requisite software licenses. During the inspection, five computers were seized containing computer programs, computer games and films.

Criminal proceedings were brought against Mr Prezhdarov and in a final judgment of 22 December 2008 he was convicted of unlawful distribution of computer programs, computer games and films. He was sentenced to one year and six months' imprisonment, suspended for three years, and a fine. The computers, which had been retained by the authorities for the duration of the criminal proceedings (despite Mr Prezhdarov's requests for their return), were also confiscated.

In the meantime, the applicants' computer club was closed down in November 2004 for health reasons.

Relying on Article 8 (right to respect for private life) and Article 13 (right to an effective remedy) of the Convention, the applicants allege that the search of their computer club and the seizure as well as ensuing retention of their five computers was both unlawful and unnecessary. They complain in particular that the seized computers contained private correspondence and personal information which were unrelated to the criminal proceedings against Mr Prezhdarov.

Bulgaru v. the Republic of Moldova (no. 35840/09)

The case concerns an allegation of severe police brutality.

The applicant, Ion Bulgaru, is a Moldovan national who was born in 1982 and is currently detained in Cricova Prison (the Republic of Moldova).

In December 2008 Mr Bulgaru, already serving a ten-year sentence in Cricova Prison, was taken to Chişinău Central police station for questioning about a murder committed inside the prison. Mr Bulgaru alleges that he was ill-treated when he refused to confess and was taken back to the same police station on two more occasions in January 2009 for further interrogation during which time the ill-treatment continued and intensified. He notably submits that on 21 January he was struck and slapped so violently that he ended up trying to take his own life by cutting the veins on his wrist. On being released from hospital after his suicide attempt, he claims that the police then further interrogated and tortured him by tying his arms and feet together behind his back and suspending him from a metal bar. Mr Bulgaru was eventually transferred back to Cricova Prison on 30 January 2009 following the involvement of a lawyer who had been employed by Mr Bulgaru's family. Mr Bulgaru's state of health deteriorated after that and he ended up spending the next two months in hospital where he was diagnosed with severe radial neuropathy (damage to a nerve) of the right arm.

In the meantime, Mr Bulgaru's lawyer had complained to the authorities about his client's ill-treatment. The complaint was, however, dismissed as ill-founded on 31 July 2009 due to lack of evidence, the investigating authorities principally relying on statements made by the accused police officers who denied the accusations of ill-treatment as well as by the police station's nurse.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Bulgaru alleges that he was tortured by the police and that the authorities failed to properly investigate his ensuing complaint.

Thursday 2 October 2014

DELTA PEKÁRNY a.s. v. the Czech Republic (no. 97/11)

The applicant company, DELTA PEKÁRNY a.s., is a limited company under Czech law with its registered office in Brno (the Czech Republic).

The case concerns an inspection carried out in its premises on 19 November 2003, in the context of administrative proceedings which were opened on the same date and concerned an infringement of competition rules.

According to the inspection report, the grounds for and purpose of the search was to examine documents in the context of those administrative proceedings. During the inspection officials obtained access to certain letters from the company's representatives and, according to the report, were provided with copies of seven documents. The applicant company was subsequently fined for refusing to allow an in-depth examination of its data. It challenged that decision, arguing, among other points, that it was contrary to domestic law and to the European Convention on Human Rights for the Czech Competition Authority to carry out an inspection without having received prior authorisation from a court. All of the appeals lodged by the applicant company, including a constitutional appeal in 2009, were dismissed.

The applicant company alleges that the inspection of its premises without any judicial supervision amounted to a breach of its rights as protected by Article 8 (right to respect for private and family life, home and correspondence). Under Article 13 (right to an effective remedy), it complains that it had no effective remedy in respect of that complaint. Relying on Article 6 § 1 (right to a fair hearing), it submits that its right not to incriminate itself was breached, in that it was obliged to cooperate with the Competition Authority on pain of a fine. Relying also on Article 14 (prohibition of discrimination), it alleges that it had not benefited from the prior authorisation by a court afforded to any person in respect of searches conducted in the context of criminal proceedings. Lastly, under Article 1 of Protocol No. 1 (protection of property), it complains that it was ordered to pay a fine.

ADEFDROMIL v. France (no. 32191/09)

The case concerns the prohibition on trade unions within the French army.

The applicant association, the Association de Défense des Droits des Militaires (Association for the Protection of the Rights of Service Personnel, "ADEFDROMIL"), was set up in 2001 by two servicemen, Captain Bavoil (then a serving member of the military) and Major Radajewski, with the statutory objective of "studying and defending the collective or individual rights and pecuniary, professional and non-pecuniary interests of service personnel". From June 2007 onwards, the applicant association lodged several applications for judicial review on the grounds of abuse of authority against administrative decisions which it considered to adversely affect the pecuniary and non-pecuniary situation of service personnel. The *Conseil d'État* dismissed these applications on the ground that the applicant association was in breach of the provisions of the Defence Code, in that it had the characteristics of a professional group resembling a trade union and that, in consequence, it was not competent to request that the decisions in question be set aside.

Relying on Article 11 (freedom of assembly and association) and Article 6 § 1 (right to a fair hearing), the applicant association complains about the fact that French law forbids the creation of associations or groups resembling a trade union within the army and does not permit them to take legal proceedings to defend their rights and professional interests. It also alleges, under Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination), that this inability to bring legal proceedings amounts to discrimination in relation to other associations.

Fakailo dit Safoka et autres v. France (no. 2871/11)

The applicants, Mikaele Fakailo, known as Safoka, Gérard Jodar, Sele Lami, Sagato Uveakovi, and Julien Vaiagina, are French nationals who were born in 1964, 1952, 1975, 1972 and 1976 respectively and live in Dumbéa and, in the case of Mr Vaiagina, in Païta, New Caledonia (France).

The case concerns the applicants' conditions of detention in the Nouméa police station and Camp Est Prison.

Following a sit-in on the runway of Nouméa airport by activists from the USTKE trade union (*Union syndicale des travailleurs kanak et des exploités*), twenty-eight people, including the applicants, were arrested and held in police custody for forty-eight hours in cells in the Nouméa central police station. The applicants were charged with interference with airport traffic and degradation of public

property, and placed in pre-trial detention in the Camp Est Prison. Before the Nouméa Criminal Court, they raised several grounds of nullity, particularly with regard to the conditions in which they had been kept while in police custody. However, these arguments were rejected and the applicants were convicted and received prison sentences. Their appeal on points of law was dismissed.

The applicants allege that the conditions of detention in the Nouméa police station and the Camp Est Prison were contrary to Article 3 (prohibition of inhuman or degrading treatment). They also submit that, given their conditions of detention while in police custody and subsequently in the Camp Est Prison, they had been unable to defend themselves before the Nouméa Criminal Court in a manner that was compatible with Article 6 §§ 1 and 3 (right to a fair trial). Lastly, under Article 6 § 1 (right to a fair trial), the applicants complain that they had been questioned in police custody without the assistance of a lawyer and without the latter having access to their case file.

Matelly v. France (no. 10609/10)

The case concerns the prohibition on trade unions within the French army.

The applicant, Jean-Hugues Matelly, is a French national who was born in 1965 and lives in Le Plessis-Robinson (France). An officer in the gendarmerie, he has worked as a management accountant in the Picardy Gendarmerie Region since 2005. He is also an associate researcher in a laboratory affiliated to the French National Scientific Research Centre (CNRS).

Mr Matelly was a founding member and later vice-president of the association "Forum gendarmes et citoyens" (Forum for Gendarmes and Citizens), set up to provide a legal framework for an internet forum called "gendarmes et citoyens" (gendarmes and citizens), created in 2007. According to the applicant, this forum was a moderated and managed area, intended to enable gendarmes and citizens to express themselves and exchange views. The day after it was officially announced that the association had been set up, the Director General of the National Gendarmerie ordered the applicant and the other serving gendarmes who were members of the association to resign from it immediately, on the ground that it had the characteristics of a professional group resembling a trade union, prohibited by the Defence Code. Mr Matelly resigned from the association on 5 June 2008. On 26 February 2010 the *Conseil d'État* dismissed an application for judicial review of the order to resign that had been sent to the applicant and other serving gendarmes who were members of the association.

Relying on Article 11 of the Convention (freedom of assembly and association), the applicant complains of an unjustified and disproportionate interference in the exercise of his freedom of association. Mr Matelly also alleges a violation of Article 10 (freedom of expression), in view of the fact that none of the documents published by the association to which he had contributed had been called into question by the military authority. Lastly, under Articles 6 § 1 (right to a fair hearing) and 13 (right to an effective remedy), he complains of the unfairness of the proceedings before the *Conseil d'État*.

Hansen v. Norway (no. 15319/09)

The case concerns the filtering procedure in appeal proceedings in civil cases brought before the Norwegian High Court. The mechanism was introduced by the new Norwegian Code of Civil Procedure in 2005 in order to stop clearly unmeritorious appeals to the High Court.

The applicant, Hroar Anton Hansen, is a Norwegian national who was born in 1947 and lives in Nesoddtangen (Norway). He complains about the Norwegian High Court's refusal of his application to appeal in a property dispute between him and his ex-wife.

On 3 November 1995 Mr Hansen and his then wife concluded an agreement that they each owned 50% of a property, the Ekheim estate. After their divorce, in 2005 Mr Hansen's ex-wife sold the

property to a company, *Ekheim Invest AS*. Mr Hansen then brought civil proceedings before the City Court claiming that he was entitled to 50% of the property owned by *Ekheim Invest AS*.

The City Court found in favour of *Ekheim Invest AS* and Mr Hansen appealed that decision to the Borgarting High Court. Mr Hansen argued in particular in his appeal that the City Court had shortened the duration of the hearing on his case from an initial three days to five hours, thus substantially reducing his opportunity to have witnesses heard in his favour or documentary evidence presented, and had wrongly assessed the legal issues to be determined. Mr Hansen's appeal was unanimously dismissed by the High Court on 12 June 2008. The High Court reasoned that it was clear that the appeal would not succeed and that its admission should therefore be refused pursuant to the Norwegian Code of Civil Procedure. An application to appeal to the Supreme Court was rejected on 19 September 2008.

Relying on Article 6 § 1 (right to a fair hearing), Mr Hansen complains that the High Court's decision of June 2008 to dismiss his appeal without giving adequate reasons violated his right to a fair hearing.

Church of Scientology of St Petersburg and Others v. Russia (no. 47191/06)

The applicants in this case are the Church of Scientology of St Petersburg, an unincorporated group of Russian citizens formed for the collective study of Scientology, and six members of this group: Galina Shurinova, Nadezhda Shchemeleva, Anastasiya Terentyeva, Ivan Matsitskiy, Yuliya Bryntseva, and Galina Frolova, Russian nationals, born in 1954, 1955, 1979, 1975, 1977, and 1955 respectively. The case concerns their complaint about the authorities refusing to register their Scientology group as a legal-entity.

Between March 1995 and August 2003 the applicants' Scientology group, led by Ms Shurinova since the late 1980s, submitted six applications for registration. The registration authorities rejected all their applications, each time citing new grounds for their refusal. The most recent refusal referred in particular to the alleged unreliability of a document confirming that the group had been in existence for 15 years, a legal requirement under Russian law for any new religious group to be registered. In October 2003 the applicants challenged the refusals in court and, in December 2005, the St Petersburg District Court held that the refusal to register their group as a legal entity had been lawful, citing defects in the document confirming the existence of the religious group for 15 years. This judgment was upheld on appeal in May 2006.

Relying in particular on Article 9 (freedom of thought, conscience, and religion) interpreted in the light of Article 11 (freedom of assembly and association), the Scientology group complain that the decisions refusing to register them as a legal entity were arbitrary.

Misan v. Russia (no. 4261/04)

The applicant, Tatyana Misan, now deceased, is a Russian national who was born in 1973 and lived in Vladivostok. The case concerns a police search of Ms Misan's flat in connection with criminal proceedings brought against her father, a naval officer, who was suspected of forgery.

On 14 March 2003 in the evening the police went to Ms Misan's flat to carry out a search to find and seize objects of relevance to the criminal case against her father. When she refused to let the police in, they broke the door down and, having searched the flat, seized her and her father's seaman passport, a printer and six floppy disks. She lodged a complaint with the domestic courts, complaining that the search had been carried out late at night and that personal belongings, of no relevance to the criminal case against her father, had been seized during the search. Her complaint was ultimately rejected on appeal on 7 July 2003 during a hearing on her case held in her and her lawyer's absence.

Ms Misan complains under Article 8 (right to respect for private and family life and the home) about the search of her flat and alleges under Article 6 § 1 (right to a fair hearing) that the related review proceedings were unfair, notably because the judge failed to adjourn the appeal hearing of 7 July 2003 when told that Ms Misan's lawyer was ill and could not be present.

Veniamin Tymoshenko and Others v. Ukraine (no. 48408/12)

The case concerns the ban on a strike by AeroSvit Airlines cabin crew.

The applicants, Veniamin Tymoshenko, Andriy Borodin, Olga Ivanova, Oleg Pushnyak, and Taras Tovstyy, are Ukrainian nationals who were born in 1975, 1973, 1971, 1972, and 1984 respectively. Mr Borodin lives in Boryspil (Ukraine) and all the other applicants live in Kyiv.

In September 2011 Aerosvit cabin crew, including the five applicants who were employed with the airline at the time, decided to embark on industrial action seeking resolution of a labour dispute with the management of Aerosvit over a number of issues, including salaries, allowances and safety. The relevant authorities were notified of the decision to hold a strike. However, in October 2011, following a claim lodged by the management of Aerosvit, the domestic courts banned the strike on the ground that it would be unlawful. The courts relied notably on the Transport Act, which prohibits strikes at transport enterprises if they affect the transportation of passengers and on the Resolution of Labour Disputes Act, which prohibits strikes if they are likely to endanger human life or health.

Relying on Article 11 (freedom of assembly and association), the applicants complain about the authorities' unconditional ban on their strike on the sole ground that they were employed by a passenger carrier.

Repetitive cases

The following cases raise issues which have already been submitted to the Court.

Dimitras and Gilbert v. Greece (no. 36836/09)

This case mainly concerns a complaint by Mr Dimitras, alleging that he was obliged, while being questioned as a witness before a criminal court in the context of criminal proceedings, to reveal that he was not an Orthodox Christian in order to be dispensed from taking the religious oath provided for in the Code of Criminal Procedure. He relies on Article 9 (right to freedom of thought, conscience and religion) and Article 13 (right to an effective remedy).

Koksharova v. Russia (no. 25965/03)

The applicant in this case complains about the quashing, by way of supervisory review, of a domestic court's final decision against the Social Security Fund awarding her compensation for damage to her health. She relies on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property).

Smertin v. Russia (no. 19027/07)

The applicant in this case complains of the conditions of his pre-trial detention on drug-related charges. He relies on Article 3 (prohibition of inhuman or degrading treatment).

Volyanyk v. Ukraine (no. 7554/10)

The applicant in this case, a former deputy chief guard for a State-owned railway company, complains that his pre-trial detention on suspicion of covering up thefts from the company's premises was unlawful. He relies on Article 5 § 1 (c) (right to liberty and security).

Length-of-proceedings cases

In the following cases, the applicants complain in particular about the excessive length of (non-criminal) proceedings.

Mantzava and Others v. Greece (nos. 4310/11, 54297/11, 77047/12, and 77081/12)
Pina e Moura v. Portugal (no. 44199/12)

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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.