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

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Grand Chamber Panel's decisions

At its last meeting (Monday 1 June 2015 2015), the Grand Chamber panel of five judges decided to refer five cases and to reject requests to refer 19 other cases[1].

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

Dubská and Krejzová v. the Czech Republic (applications nos. 28859/11 and 28473/12): which concerns the prohibition under Czech law on midwives assisting home births;

Béláné Nagy v. Hungary (no. 53080/13): which concerns the applicant's complaint of having lost her entitlement to a disability pension due to newly introduced eligibility criteria;

Paradiso and Campanelli v. Italy (no. 25358/12): which concerns the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract entered into by a couple; it subsequently transpired that they had no biological relationship with the child;

Hutchinson v. the United Kingdom (no. 57592/08): concerning the complaint by a man serving a whole life sentence for murder that his sentence amounts to inhuman and degrading treatment as he has no hope of release;

Ibrahim and Others v. the United Kingdom (nos. 50541/08, 50571/08, 50573/08 and 40351/09): concerning the temporary delay in providing access to a lawyer during the police questioning of the 21 July 2005 London bombers and an accomplice and the alleged prejudice to their ensuing trials.

Referral accepted

Dubská and Krejzová v. the Czech Republic (applications nos. 28859/11 and 28473/12)

The applicants, Šárka Dubská and Alexandra Krejzová, are Czech nationals who were born in 1985 and 1980 and live in Jilemnice and Prague (the Czech Republic) respectively. Both applicants wished to give birth at home. However, under Czech law health professionals are prohibited from assisting with home births.

When pregnant with her second child in 2010, Ms Dubská decided to give birth at home, given her experience during the birth of her first child in 2007 in a hospital when she had been urged to have various medical interventions against her wishes and had been ordered to stay in hospital longer than she wished. On her enquiries, she was informed that Czech legislation did not provide for the possibility of a public health insurance to cover the costs of a birth at home and that midwives were allowed to assist at births only in premises with the technical equipment required by law. Ms Dubská eventually gave birth to her second child at home alone in May 2011. In February 2012, the Czech Constitutional Court dismissed her complaint about being denied the possibility of giving birth at home with the assistance of a health professional.

[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.

Ms Krejzová gave birth to her first two children at home, in 2008 and 2010 respectively, with midwives who assisted her without any authorisation from the State. At the time of lodging her application with the European Court of Human Rights, she was pregnant with her third child but unable to find a midwife, because under new legislation, in force from 1 April 2012, midwives risked heavy fines for providing medical services without authorisation. She ended up giving birth in May 2012, 140 km from Prague in a hospital with a reputation for respecting the wishes of mothers during delivery.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, both applicants complain that mothers have no choice but to give birth in a hospital if they wish to be assisted by a health professional.

In its Chamber judgment of 11 December 2014, the European Court of Human Rights held, by six votes to one, that there had been no violation of Article 8 of the Convention. It took into consideration, in particular, that there was no European consensus on whether or not to allow home births, and that this question involved the allocation of financial resources, for example for an adequate emergency system for home births. The Chamber concluded that States had a lot of room for manoeuvre ("margin of appreciation") in regulating this issue. Moreover, the applicants did not have to bear a disproportionate burden on account of the fact that they could only be assisted by a medical professional if giving birth in a hospital.

On 1 June 2015 the case was referred to the Grand Chamber at the request of the applicants.

Béláné Nagy v. Hungary (no. 53080/13)

The applicant, Béláné Nagy, is a Hungarian national who was born in 1959 and lives in Baktalórántháza (Hungary).

Ms Nagy's loss of capacity to work was assessed to be 67 per cent in April 2001, and she was granted a disability pension. In 2010 she lost her entitlement, since the applicable medical criteria had changed and she no longer met them. After the enactment of a new law on disability allowances, which entered into force in January 2012 and introduced a number of additional criteria for eligibility, she was denied a disability pension in June 2012, having submitted a new request for such allowance. Although the degree of her disability was reassessed and was found to warrant a disability pension, her request was nevertheless rejected, because under the new law, the volume of her past contributions to the social security scheme was no longer sufficient.

Relying in substance on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Ms Nagy complains that she lost her livelihood, previously secured by the disability pension, although she maintains that her health is as poor as at the time she was first diagnosed with her disability.

In its Chamber judgment of 10 February 2015, the European Court of Human Rights held, by four votes to three, that there had been a violation of Article 1 of Protocol No. 1. It noted in particular that Ms Nagy had been totally divested of her disability care instead of being subject to a reasonable and proportionate reduction. This course of events amounted to a drastic and unforeseeable change in the conditions of her access to disability benefits. The Chamber found that Ms Nagy had thus had to bear an excessive and disproportionate individual burden in the circumstance.

On 1 June 2015 the case was referred to the Grand Chamber at the request of the Hungarian Government.

Paradiso and Campanelli v. Italy (no. 25358/12)

The applicants, Ms Donatina Paradiso and Mr Giovanni Campanelli, are Italian nationals who were born in 1967 and 1955 respectively and live in Colletorto (Italy). They are husband and wife.

After unsuccessfully attempting to use *in vitro* fertilisation Ms Paradiso and Mr Campanelli opted for a gestational surrogacy arrangement to become parents. For that purpose they entered into an agreement with the company Rosjurconsulting in Russia. A surrogate mother was found and given *in vitro* fertilisation and a baby was born on 27 February 2011 in Moscow. In accordance with Russian law, Ms Paradiso and Mr Campanelli were registered as the baby's parents, without any indication that the child had been born through a surrogacy arrangement.

In April 2011 the Italian Consulate in Moscow delivered documents allowing the child to leave for Italy. A few days after their arrival in Italy, Mr Campanelli unsuccessfully asked the municipal authority of Colletorto to register the birth. The Italian Consulate in Moscow informed the Campobasso Minors Court, the Ministry of Foreign Affairs and the Collerorto municipality that the file on the child's birth contained false information.

On 5 May 2011 Ms Paradiso and Mr Campanelli were charged with "misrepresentation of civil status", and violation of the adoption legislation, in that they had brought the child to Italy in breach of Italian and international law and without complying with the authorisation to adoption obtained by them in December 2006, which ruled out the adoption of such a young child. On the same date the public prosecutor at the Campobasso Minors Court requested the opening of proceedings to free the child for adoption, since, for the purposes of Italian law, he had been abandoned.

In August 2011 a DNA test revealed that Mr Campanelli was not the child's biological father. Gametes from other sources must have been used in the course of the fertilisation procedure. In consequence, the minors court decided on 20 October 2011 that the child should be removed immediately from the applicants and placed under guardianship, on the ground that there was no biological relationship between them and that there existed doubts as to the applicants' child-raising and emotional capacities, the conduct of Ms Paradiso and Mr Campanelli having been contrary to the law. The baby was placed in a children's home, without Ms Paradiso and Mr Campanelli being informed of his location or allowed any contact, then in January 2013 the baby was entrusted to foster parents. In addition, he was left without a formal identity.

In April 2013 the refusal to register the Russian birth certificate was confirmed on the ground that its registration would be contrary to public policy, given that the certificate was inaccurate, there being no biological relationship between the child and the applicants. The latter unsuccessfully submitted that they had acted in good faith, and claimed to have been unaware that Mr Campanelli's seminal fluid had not been used in the Russian clinic.

In April 2013 the child received a new identity, and it was indicated in the new birth certificate that he had been born to unknown parents. On 5 June 2013 the minors court declared that the applicants no longer had the capacity to act in the adoption procedure initiated by them, given that they were neither the parents nor relatives of the child.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicants complain, in particular, about the child's removal from them, and about the refusal to acknowledge the parent-child relationship established abroad by registering the child's birth certificate in Italy.

In its Chamber judgment of 27 January 2015, the European Court of Human Rights held, by five votes to two, that there had been a violation of Article 8 of the Convention. It found in particular that the public-policy considerations underlying Italian authorities' decisions – finding that the applicants had attempted to circumvent the prohibition in Italy on using surrogacy arrangements and the rules governing international adoption – could not take precedence over the best interests of the child, in spite of the absence of any biological relationship and the short period during which the applicants had cared for him. Reiterating that the removal of a child from the family setting was an extreme measure that could be justified only in the event of immediate danger to that child, the Chamber considered that, in the present case, the conditions justifying a removal had not been met.

On 1 June 2015 the case was referred to the Grand Chamber at the request of the Italian Government.

Hutchinson v. the United Kingdom (no. 57592/08)

The applicant, Arthur Hutchinson, is a British national who was born in 1941 and is detained in Her Majesty's Prison Durham (the United Kingdom).

In September 1984 Mr Hutchinson was convicted of aggravated burglary, rape and three counts of murder, the trial judge sentencing him to a term of life imprisonment with a recommended minimum tariff of 18 years. In December 1994 the Secretary of State informed Mr Hutchinson that he had decided to impose a whole life term and, in May 2008, the High Court found that there was no reason for deviating from this decision given the seriousness of Mr Hutchinson's offences. Mr Hutchinson's appeal was dismissed by the Court of Appeal in October 2008.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Hutchinson alleges that his whole life sentence amounts to inhuman and degrading treatment as he has no hope of release.

In its Chamber judgment of 3 February 2015, the European Court of Human Rights held, by six votes to one, that there had been no violation of Article 3 of the Convention. It observed in particular that, in a previous judgment[2] of 9 July 2013, it had found that the domestic law concerning the Justice Secretary's power to release a whole life prisoner was unclear. In that case, the Court was therefore not persuaded that the applicants' life sentences were compatible with Article 3 and held that there had been a violation of Article 3. However, the UK Court of Appeal had since explicitly addressed those doubts[3] and held that the Secretary of State for Justice was obliged under national law to release a person detained on a whole life order where "exceptional grounds" for release could be shown to exist, and that this power of release was reviewable by the national courts. Having regard to this clarification, the Chamber concluded that whole life orders were open to review under national law and therefore compatible with Article 3 of the Convention.

On 1 June 2015 the case was referred to the Grand Chamber at the request of Mr Hutchinson.

Ibrahim and Others v. the United Kingdom (nos. 50541/08, 50571/08, 50573/08 and 40351/09)

The applicants in the first three applications, Muktar Said Ibrahim, Ramzi Mohammed and Yassin Omar, are Somali nationals who were born in 1978, 1981, and 1981 respectively. The applicant in the fourth application, Ismail Abdurahman, is a British national who was born in Somalia in 1982.

On 7 July 2005 suicide bombers detonated their bombs on the London transport system, killing 52 people and injuring countless more. Two weeks later, on 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene but were later arrested.

Following the arrest of the first three applicants – Mr Ibrahim, Mr Mohammed and Mr Omar – they were temporarily refused legal assistance in order for police "safety interviews" (interviews conducted urgently for the purpose of protecting life and preventing serious damage to property) to be conducted. Under the Terrorism Act 2000, such interviews can take place in the absence of a solicitor and before the detainee has had the opportunity to seek legal advice. During the interviews the applicants denied any involvement in or knowledge of the events of 21 July. At trial, they acknowledged their involvement in the events but claimed that the bombs had been a hoax and were never intended to explode. The statements made at their safety interviews were admitted at

[2] In the case of *Vinter and Others v. the United Kingdom* (applications nos. 66069/09, 130/10 and 3896/10).
[3] In its judgment in *R v. Newell; R v. McLoughlin*, of 18 February 2014.

trial. They were convicted in July 2007 of conspiracy to murder and sentenced to a minimum term of 40 years' imprisonment. The Court of Appeal subsequently refused leave to appeal against their conviction.

Mr Abdurahman, the fourth applicant, was not suspected of having detonated a bomb and was initially interviewed by the police as a witness. He started to incriminate himself by explaining his encounter with one of the suspected bombers shortly after the attacks and the assistance he had provided to that suspect. The police did not, at that stage, arrest him and advise him of his right to silence and to legal assistance. Instead, they continued to question him as a witness and took a written statement from him. He was subsequently arrested and offered legal advice. In his ensuing interviews, he adopted and referred to his written statement. This statement was admitted as evidence at his trial. He was convicted in February 2008 of assisting one of the bombers and of failing to disclose information about the bombings. He was sentenced to ten years' imprisonment. His appeal against his conviction was dismissed in November 2008 and his sentence reduced to eight years' imprisonment on account of the early assistance that he had given to the police.

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance) of the European Convention on Human Rights, the applicants complain about their lack of access to lawyers during their initial police questioning, alleging that their subsequent convictions were unfair because of the admission at trial of the statements they had made during those police interviews.

In its Chamber judgment of 16 December 2014, the European Court of Human Rights, held, by six votes to one, that there had been no violation of Article 6 § 1 and 3 (c) (right to a fair trial and right to legal assistance) of the Convention. The Court was satisfied that, at the time of the four applicants' initial police interviews, there had been an exceptionally serious and imminent threat to public safety, namely the risk of further attacks, and that this threat provided compelling reasons justifying the temporary delay in allowing the applicants' access to lawyers. The Chamber also found that no undue prejudice had been caused to the applicants' right to a fair trial by the admission at their trials of the statements they had made during police interviews and before they had been given access to legal assistance. It took into account the counterbalancing safeguards contained in the national legislative framework, as applied in each of the applicants' cases; the circumstances in which the statements had been obtained and their reliability; the procedural safeguards at trial, and in particular the possibility to challenge the statements; and the strength of the other prosecution evidence. In addition, as concerned the fourth applicant, who had made self-incriminating statements during his police interview, the Chamber emphasised the fact that he had not retracted his statement even once he had consulted a lawyer but had continued to rely on his statement in his defence up until his request that it be excluded at trial.

On 1 June 2015 the case was referred to the Grand Chamber at the request of two of the applicants (Mr Omar (application no. 50573/08) and Mr Abdurahman (application no. 40351/09)).

Requests for referral rejected

Judgments in the following 19 cases are now final[4].

Requests for referral submitted by the applicants

Neshkov and Others v. Bulgaria (applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13), judgment of 27 January 2015

Nikolić v. Croatia (no. 5096/12), judgment of 29 January 2015

Veits v. Estonia (no. 12951/11), judgment of 15 January 2015

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

Saghinadze v. Georgia (no. 18768/05), judgment (just satisfaction) of 13 January 2015

Kincses v. Hungary (no. 66232/10), judgment of 27 January 2015

Petropavlovskis v. Latvia (no. 44230/06), judgment of 13 January 2015

Hoholm v. Slovakia (no. 35632/13), judgment of 13 January 2015

Vefa Serdar v. Turkey (no. 7309/04), judgment of 27 January 2015

Peter Armstrong v. the United Kingdom (no. 65282/09), judgment of 9 December 2014

Requests for referral submitted by the Government

Rubins v. Latvia (no. 79040/12), judgment of 13 January 2015

Phostira Efthymiou and Ribeiro Fernandes v. Portugal (no. 66775/11), judgment of 5 February 2015

Alecu and Others v. Romania (nos. 56838/08 and 80 other applications), judgment of 27 January 2015

Albakova v. Russia (no. 69842/10), judgment of 15 January 2015

Eshonkulov v. Russia (no. 68900/13), judgment of 15 January 2015

Malika Yusupova and Others v. Russia (nos. 14705/09, 4386/10, 67305/10, 68860/10 and 70695/10), judgment of 15 January 2015

Nogin v. Russia (no. 58530/08), judgment of 15 January 2015

Shkarupa v. Russia (no. 36461/05), judgment of 15 January 2015

Durdu v. Turkey (no. 30677/10), judgment of 3 September 2013

Requests for referral submitted by the applicant and by the Government

Vékony v. Hungary (no. 65681/13), judgment of 13 January 2015

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