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

Press Release
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ECHR 159 (2016)
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Judgments of 17 May 2016

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

six Chamber judgments are summarised below;

four Committee judgments, which concern issues which have already been submitted to the Court, can be consulted on *Hudoc* and do not appear in this press release.

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

Fürst-Pfeifer v. Austria (applications nos. 33677/10 and 52340/10)

The applicant, Gabriele Fürst-Pfeifer, is an Austrian national who was born in 1964 and lives in Mödling (Austria). The case concerned her complaint that the Austrian courts had failed to protect her reputation against defamatory allegations made in a newspaper article.

Ms Fürst-Pfeifer is a psychiatrist and has been registered since 2000 as a psychological expert for court proceedings, in particular in custody and contact-rights-related cases. In December 2008 an article about her was published on a regional news website run by a private media company based in St. Pölten and in a printed weekly newspaper, distributed for free to every household of the district, which was published by another private media company based in Innsbruck. Part of the article's headline read: "Court expert for custody proceedings a case for therapy". The article stated in particular that Ms Fürst-Pfeifer suffered from psychological problems such as mood swings and panic attacks but had been working as a court-appointed expert for many years. The article then referred to a psychological expert report about her which had originally been commissioned in 1993 and which had been made public in the context of proceedings she had brought before the civil courts.

In January 2009 Ms Fürst-Pfeifer lodged an action with the St. Pölten Regional Court against the company which had published the online article, seeking damages for violation of her private life and the fact that she had been compromised publicly. In April 2009 the court allowed her action, ordering the publisher to pay damages and publish the operative part of the judgment. However, the appeal court set the judgment aside in November 2009, dismissing her action. The court confirmed that the passages about her mental state in the article affected her private life. However, the content of the article was true, as it only repeated information that had not been disputed by her. Furthermore, the article was directly linked to her public function as a court-appointed expert. In parallel Ms Fürst-Pfeifer also lodged an action with the Innsbruck Regional Court against the company which had published the article in the printed newspaper, seeking damages. The Innsbruck Regional Court granted her action, but the appeal court, in February 2010, set the judgment aside and dismissed her action.

Ms Fürst-Pfeifer complained that the Austrian courts had failed to protect her rights under Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

[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

No violation of Article 8

Džinić v. Croatia (no. 38359/13)

The applicant, Antun Džinić, is a Croatian national who was born in 1952 and lives in Županja (Croatia). Mr Džinić, a businessman, complained about the seizure of some of his real property pending criminal proceedings against him for economic crime.

In 2002 and then 2007 Mr Džinić was indicted on charges of economic crime, including misappropriation of company shares and misuse of a company's assets and facilities. During the ensuing proceedings, real property (notably, ten plots of land, two houses and a commercial building) belonging to Mr Džinić was seized in 2012 so as to ensure effective enforcement of a probable confiscation order at the outcome of the criminal proceedings. Mr Džinić appealed the seizure, requesting the courts to reassess the scope of the restraint on his property. He argued in particular that there was a gross disproportion between the market value of the seized property (estimated at the time at 9,887,084 euros (EUR)) and the pecuniary gain for which he had been indicted in the criminal proceedings (approximately 1,060,000 euros). However, in October 2013 the Supreme Court dismissed Mr Džinić's appeal, rejecting his arguments as speculative. He challenged this decision before the Constitutional Court, which declared his complaint inadmissible in February 2014. Mr Džinić was ultimately found guilty in July 2014 on several counts of misuse of a company's assets and facilities and sentenced to two years' imprisonment. The case is pending on appeal before the Supreme Court and the seizure order remains in force.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention, Mr Džinić complained that the seizure of his property had been disproportionate in the circumstances of his case, notably alleging that it had been imposed and kept in force without an assessment of whether the value of the seized property had corresponded to the possible confiscation claim.

Violation of Article 1 of Protocol No. 1

Just satisfaction: 2,000 euros (EUR) (non-pecuniary damage) and EUR 850 (costs and expenses)

Liga Portuguesa de Futebol Profissional v. Portugal (no. 4687/11)*

The applicant, the Portuguese Professional Football League, is a Portuguese private association based in Porto. The case concerned proceedings brought against it before the Lisbon industrial tribunal.

In 2002 Mr R., a professional footballer, brought an action against the Portuguese Professional Football League, seeking to have two clauses of a 1999 collective agreement declared invalid. He considered that they entailed restrictions on professional footballers' freedom to engage in an occupation if their contractual ties with their clubs were terminated. Mr R.'s claim was dismissed by the Lisbon industrial tribunal, but he lodged an appeal directly on points of law to the Supreme Court of Justice (*per saltum* appeal). On 7 March 2007 the Supreme Court quashed the contested judgment and declared invalid the disputed clauses. The League applied to the Supreme Court for a declaration of nullity, but its request was dismissed on 15 May 2007; that decision was subsequently upheld by the Employment and Welfare Division of the Supreme Court.

The League then lodged a constitutional appeal before the Constitutional Court, but this was rejected on 13 January 2010. C.A.F.C., a former judge at the Supreme Court who had presided over the bench which delivered the judgment of 7 March 2007, was the judge rapporteur at the Constitutional Court for this case. The League complained about the high court fees, and also challenged the decision, alleging that the Constitutional Court had not been impartial. That court

dismissed the League's conclusions, holding that the issue decided by the Constitutional Court on 13 January 2010 had been different to that decided by the Supreme Court on 7 March 2007.

The League lodged a new appeal, which was also dismissed, as were its complaints concerning court costs. The League continued to lodge constitutional appeals and bring actions to have decisions declared invalid until the end of 2011; all of those proceedings were unsuccessful.

Relying on Article 6 (right to a fair hearing), the applicant association complained about the failure to communicate to it certain items from the case file and the fact that the case had been decided on the basis of arguments raised by the courts themselves, which had not been discussed with the parties. It also alleged that the bench of the Constitutional Court which had examined its appeal had not been impartial. Relying on Article 6 § 1 (right of access to a court), it considered that the excessively high court fees before the Constitutional Court had breached its right of access to a court. Under the same Article, it alleged that the length of the proceedings had breached the principle of a "reasonable time".

No violation of Article 6 § 1 – as concerns the failure to communicate to the applicant association certain items from the case file
Violation of Article 6 § 1 – as concerns the fact that the case was decided on the basis of arguments which had not been discussed with the parties
Violation of Article 6 § 1 – on account of the lack of impartiality of the bench of the Constitutional Court
No violation of Article 6 § 1 – as concerns the applicant association's access to court
Violation of Article 6 § 1 – on account of the excessive length of proceedings

Just satisfaction: EUR 3,750 (non-pecuniary damage) and EUR 4,000 (costs and expenses)

Răchită v. Romania (no. 15987/09)

The applicant, Doru Răchită, now deceased, was a Romanian national who was born in 1949 and lived in Bucharest. His son, Răzvan Răchită, continued the case on his behalf. The case concerned his complaint about the dismissal of his action seeking removal of a fence which obstructed access to his property.

In 2007 Mr Răchită brought administrative proceedings requesting to have removed a fence that was blocking access to his property, stating that the owner of the fence lived opposite his property. The administrative authorities dismissed his request on the ground that the owner of the property adjoining his had a lawful building permit.

In April 2008 he thus brought court proceedings against the Mayor of Bucharest and the local authorities seeking a court order for removal of the fence or, in the alternative, for the local council to enlarge the road and restore full access to his property. During these judicial proceedings Mr Răchită argued that the administrative authorities had been mistaken as to the identity of the owner of the fence, pointing out that his complaint concerned the neighbour whose property was located opposite and not next to his. Furthermore, he submitted to the courts that he had not been able to identify the neighbour who lived opposite as the property was empty and there was no visible postal number on the entrance gate. Mr Răchită's complaint was however dismissed by a final judgment of November 2008, essentially on the ground that he had not specified which of his neighbours had closed off part of the street with a fence.

Relying in particular on Article 6 § 1 (right to a fair hearing), Mr Răchită complained that the proceedings concerning the removal of the fence had been unfair, notably alleging that the courts had dismissed his action without properly examining the evidence submitted to them, in particular the question of the administrative authorities misidentifying the owner of the fence.

Violation of Article 6 § 1

Just satisfaction: EUR 2,400 (non-pecuniary damage) and EUR 11.56 (costs and expenses)

Nekrasov v. Russia (no. 8049/07)

The applicant, Sergey Nekrasov, is a Russian national who was born in 1967 and is currently serving a 25-year prison sentence in a correctional colony in the Republic of Bashkortostan (Russia) for, among other things, involvement in an organised armed gang.

The case mainly concerned Mr Nekrasov's allegation that he had been abducted by the police on 17 November 2004, taken to a cottage and subjected to various forms of ill-treatment for the next six days because he had refused to make self-incriminating statements. He claimed that he had been forced to do the splits, suffocated with a plastic bag, a book had been held on top of his head and hit with a mallet and his arms twisted and stretched. Two medical examinations were carried out, first on 24 November 2004 at the premises of the Organised Crime Department and then the following day when he was admitted to the remand prison. The examinations confirmed that Mr Nekrasov had a number of injuries, in particular bruises and abrasions. He also submits that for a number of days following the ill-treatment he could not walk unassisted.

Mr Nekrasov's lawyer complained in December 2004 to the prosecuting authorities about the beatings to which his client had been subjected. Over the course of the next two and a half years (up until July 2007), at least seven decisions were taken by the national authorities refusing to institute criminal proceedings against police officers or anyone else due to lack of evidence. All but one of these decisions was quashed by the supervising prosecutors as unfounded, and additional pre-investigation inquiries were ordered. To date, however, no fully-fledged criminal investigation has ever been opened.

Mr Nekrasov, officially arrested on 23 November 2004, was detained pending the investigation and then the trial essentially on the grounds of the gravity of the charges against him and the risk of his absconding, exerting pressure on victims and witnesses, destroying evidence and obstructing justice. Pending the investigation, in May 2006 Mr Nekrasov's detention on remand was extended so that he and his lawyer could finish studying the case file (which they had started going through the previous month). In the course of the trial, the defence was also granted additional time to complete their examination of the case file. Mr Nekrasov was ultimately convicted in May 2008 notably of involvement in an organised armed gang, theft, robbery, stealing firearms, hijacking, murder and kidnapping.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Nekrasov alleged that he had been ill-treated by the police and that there had been no investigation into his allegation. Also relying on Article 5 §§ 1 and 3 (right to liberty and security), he alleged that his detention on remand had been unlawful after May 2006 as it had not been based on relevant and sufficient reasons. Lastly, he alleged under Article 6 §§ 1 and 3 (b) (right to a fair trial and right to adequate time and facilities for preparation of defence) that he had not been given the opportunity to study the case file in full before the case had been submitted to the trial court.

Violation of Article 3 (investigation)
No violation of Article 3 (treatment)
Violation of Article 5 § 1 – on account of the Mr Nekrasov's detention after 17 May 2006
Violation of Article 5 § 3
No violation of Article 6 §§ 1 and 3 (b)

Just satisfaction: The applicant did not submit a claim for just satisfaction.

Yegorychev v. Russia (no. 8026/04)

The applicant, Ilya Yegorychev, is a Russian national who was born in 1968 and lives in Moscow. The case concerned the criminal proceedings brought against him for fraud and his related pre-trial detention.

Charges of fraud were brought against Mr Yegorychev in June 2001 and he had to sign a written undertaking not to leave his place of residence. From September 2001 this measure was revoked and he was remanded in custody on account of the seriousness of the charges against him, the risk of his absconding and the necessity to secure the enforcement of his future conviction. His detention was repeatedly extended for essentially the same reasons, as well as the possibility of his obstructing justice, over the next two and half years. He was convicted as charged in May 2004 and sentenced to seven years and six months' imprisonment. On appeal, Mr Yegorychev complained about the unlawfulness of the composition of the trial court examining his case – alleging that two lay judges had been called for service more than once in the same year, in breach of the rules for lay judges – as well as about the reading out at trial of testimonies of the majority of the witnesses for the prosecution without the possibility of him having them cross-examined. His complaints were rejected by the appeal court. His sentence was subsequently reduced to five and half years by way of supervisory review and he was granted conditional early release in March 2005.

Relying in particular on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr Yegorychev complained that the reasons justifying his detention had essentially been based on the seriousness of the charges against him, without addressing his specific situation. Further relying on Article 6 (right to a fair trial), he complained in particular about the unfairness of the criminal proceedings against him, notably on account of the composition of the court which had convicted him – which he alleged had been in breach of the relevant domestic law.

Violation of Article 5 § 3
Violation of Article 6 - on account of the unlawful composition of the trial court

Just satisfaction: EUR 8,000 (non-pecuniary damage) and EUR 4,525 (costs and expenses)

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