



Judgments of 25 October 2016

The European Court of Human Rights has today notified in writing nine judgments¹:

six Chamber judgments are summarised below; for one other, in the case of *Otgon v. the Republic of Moldova* (application no. 22743/07), a separate press release has been issued;

two 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 below are available only in English.

Verlagsgruppe News GmbH v. Austria (application no. 60818/10)

The applicant company, Verlagsgruppe News GmbH, is a limited liability company based in Vienna. It is the owner and publisher of the weekly news magazine *Profil*. The case concerned Verlagsgruppe's civil liability for an article published in *Profil*, which had made allegations of wrongdoing by a banker.

In April 2006, the Financial Market Authority of Austria filed criminal information about offences committed by employees of the Hypo Alpe-Adria Bank, including three members of the executive board and Mr Rauscher, who had been head of the bank's treasury department. In substance, the FMA alleged that Mr Rauscher had authorised highly speculative transactions, disregarding instructions of the executive board. The criminal proceedings against Mr Rauscher were ultimately discontinued in 2008.

However, a few days after the FMA had filed its criminal information in April 2006, Verlagsgruppe published an edition of *Profil*, with a front page containing the words, "*Kärntner Hypo-Affäre – Wie viel wusste Haider?*" ("Carinthian Hypo affair - How much did Haider know?"). The magazine contained a nine-page article, detailing the heavy losses sustained by the Hypo Alpe-Adria Bank in 2004, and coverage about who was responsible. The article referred to Mr Rauscher by name, set out the criminal proceedings against him, and suggested that he was responsible for authorising transactions that led to enormous losses for the bank.

In June 2006, Mr Rauscher brought civil proceedings against Verlagsgruppe, for disclosing his identity in breach of section 7a of the Media Act. He claimed that he was not a public figure, that he had acted in accordance with instructions from his superiors, and that his position at the bank had not been such as to justify disclosure of his name. Mr Rauscher maintained that the publication of his name had had negative repercussions on his professional advancement, and had not been justified in the public interest.

Mr Rauscher's claim was dismissed by the court at first instance, which found that the public interest of the publication had outweighed Mr Rauscher's interest in the protection of his identity (in particular, because almost 50% of the bank was owned by the *Land* of Carinthia).

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

However, this decision was overturned by the Vienna Court of Appeal in April 2009. The appellate court found that the article should have confined itself to referring to the head of the bank's treasury department without mentioning Mr Rauscher's name, and awarded him EUR 3,000 in compensation.

Verlagsgruppe appealed to the Supreme Court. However, the court dismissed the application in March 2010, finding that the Court of Appeal had correctly weighed the conflicting interests of Mr Rauscher's right to respect for his private life under Article 8 of the European Convention on Human Rights, and of Verlagsgruppe's freedom of expression under Article 10 of the European Convention; noting in particular, that at the time of publication, the criminal proceedings against Mr Rauscher had been at a very early stage.

Relying on Article 10 (freedom of expression) of the Convention, Verlagsgruppe complained about the decisions of the domestic courts finding in favour of Mr Rauscher, and awarding him both damages and costs.

Violation of Article 10

Just satisfaction: 7,873.22 euros (EUR) for pecuniary damage and EUR 2,750 for costs and expenses

Arps v. Croatia (no. 23444/12)

The applicant, Adriana Arps, is a national of Croatia who was born in 1958 and lives in Hamburg. The case concerned her complaint about not being permitted to attend an appellate court session in the criminal proceedings against her.

Ms Arps and another person were indicted by the Zagreb Municipal State Attorney's Office in August 2004 on charges of aggravated fraud. They were found guilty by the Zagreb Municipal Court in February 2009, and sentenced to one year's imprisonment, suspended for four years. Together with the other accused, Ms Arps was also ordered to pay EUR 31,100 in damages to the victims.

In her appeal she contested her conviction and sentence on both factual and legal grounds, demanding a retrial. She also asked that she and her defence lawyer be allowed to appear at the session of the appeal panel.

The Bjelovar County Court examined the case file, without holding a hearing and without informing the applicant or her lawyer. The court then dismissed Ms Arps's appeal in January 2011. Her subsequent constitutional complaint was declared inadmissible in September 2011.

Relying on Article 6 §§ 1 (right to a fair trial) and 3 (c) (right to defend in person) of the Convention, Ms Arps complained that she had not been allowed to be present at the session of the appeal panel before the Bjelovar County Court.

Violation of Article 6 §§ 1 and 3 (c)

Just satisfaction: EUR 1,500 (non-pecuniary damage)

Bašić v. Croatia (no. 22251/13)

The applicant, Damir Bašić, is a Croatian national who was born in 1980 and lives in Slavonski Brod (Croatia). The case concerned the surveillance of Mr Bašić by police and the use of information obtained by surveillance in his criminal trial.

On 26 November 2007, a state attorney applied to an investigating judge of the Zagreb County Court for authority to use special investigative measures against Mr Bašić and several others. The police had suspected that Mr Bašić was committing drug trafficking and related offences. The judge issued

an order permitting the wiretapping of Mr Bašić's phone and covert monitoring. Further orders to the same effect were granted in the course of the investigation.

On 2 July 2008, on the basis of information obtained by secret surveillance, police lodged a criminal complaint against Mr Bašić and five others. An investigating judge opened a criminal investigation, and on 25 November 2008 Mr Bašić and four others were indicted for drug trafficking.

On two occasions, in June and September 2009, Mr Bašić asked the local county court to exclude evidence obtained in the course of the surveillance of him, arguing that it had been obtained unlawfully. Both applications were dismissed.

Following his trial, on 1 March 2010, Mr Bašić was found guilty of drug trafficking and sentenced to five years' imprisonment. In regard to his complaint about the surveillance, the court held that it had been ordered because there were reasons to believe Mr Bašić had commissioned the offence, and that it had been essential to the police investigation. Mr Bašić made two appeals to the Supreme Court, but these were dismissed. He filed a further constitutional complaint, but this was dismissed by the Constitutional Court on 11 July 2012.

Relying on Article 8 (right to respect for private and family life, home and the correspondence) and Article 6 § 1 (right to a fair trial), Mr Bašić argued that the surveillance orders had been unlawful because they had not been based on proper reasons; that the surveillance which had been conducted had not been justified and necessary; and that the admission of evidence obtained by unlawful surveillance had prejudiced his right to a fair trial.

Violation of Article 8

No violation of Article 6 § 1

Just satisfaction: EUR 7,500 (non-pecuniary damage)

Radunović and Others v. Montenegro (nos. 45197/13, 53000/13 and 73404/13)

The applicants, Irena Radunović, Veselin Nenezić, and Ivan Gajević are Montenegrin nationals who were born in 1982, 1967 and 1978 respectively and live in Podgorica (Montenegro). The case concerned their dismissal from positions at the US embassy, and the courts' refusal to examine their ensuing claims because of sovereign immunity.

All three applicants were employed by the US Embassy in Montenegro. Ms Radunović was a protocol specialist and translator, while Mr Nenezić and Mr Gajević were security guards. All three were dismissed from their posts.

Between November 2010 and July 2012, the three applicants brought separate civil proceedings against the US Embassy, seeking compensation. Ms Radunović sought non-pecuniary damages, while Mr Nenezić and Mr Gajević sought compensation for loss of earnings. Ms Radunović and Mr Nenezić sought reinstatement.

Between September 2011 and September 2012, the Court of First Instance in Podgorica declined jurisdiction over all of the applicants' claims (including a re-trial of Ms Radunović's claim), holding that the respondent in each case was a state and that the State had sovereign immunity from suit. The court held that this outcome was not inconsistent with Article 6 (right to a fair trial) of the European Convention and was supported by the Vienna Convention on Diplomatic Relations (VCDR). Each of the applicants appealed.

Between November 2011 and December 2012, the High Court dismissed the applicants' appeals. It upheld the sovereign immunity defence, noting that the courts' jurisdiction was not established in law or in any international agreement. Further appeals were dismissed by the Supreme Court. Between January and July 2013, the applicants lodged separate constitutional appeals, but on

18 November 2015 the Constitutional Court dismissed those of Ms Radunović and Mr Gajević, holding in particular that the sovereign immunity defence was not inconsistent with their rights under Article 6 of the Convention. Mr Nenezić's appeal is still pending.

Relying in particular on Article 6 § 1 (access to court), Ms Radunović, Mr Nenezić and Mr Gajević complained about the domestic courts' refusal to examine their civil claims on the merits.

Violation of Article 6 § 1

Just satisfaction: EUR 19,000 to Mr Nenezić and EUR 22,000 to Mr Gajević for both pecuniary and non-pecuniary damage; EUR 3,600 to Ms Radunović for non-pecuniary damage; and EUR 6,051 to Ms Radunović and EUR 3,572.50 to each Mr Nenezić and Mr Gajević for costs and expenses.

Chaushev and Others v. Russia (nos. 37037/03, 39053/03 and 2469/04)

The applicants, Osman Chaushev, Valeriy Aybazov, and Timur Shamanov, are Russian nationals who were born in 1977, 1969, and 1975 respectively and at the time the case was introduced were imprisoned in Kochubeyevskoye (Russia) and Aleksandria (Russia). They complained about being tried behind closed doors.

In April 2002 the applicants were on trial along with 17 other people before the Stavropol Regional Court, facing various charges related to a militant Islamist underground movement in the North Caucasus. Without explanation, the court ordered that the trial be held behind closed doors at Pyatigorsk remand prison. The applicants appealed the decision with the Supreme Court, complaining that the trial had been closed to the public. In May 2003 the Supreme Court dismissed their appeal without replying to their complaint.

The applicants claimed that the proceedings against them had been unfair as they had been tried behind closed doors for no good reason, in breach of Article 6 § 1 (right to a fair trial/public hearing).

Violation of Article 6 § 1 – on account of the lack of a public hearing

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

Dzhurayev and Shalkova v. Russia (no. 1056/15)

The applicants, Tuychi Dzhurayev, a Tajik national, and Yekaterina Shalkova, a Russian national, were born in 1966 and 1985 respectively and live in Perm (Russia). The case concerned an exclusion order and entry ban made against Mr Dzhurayev.

Mr Dzhurayev moved to Russia from Tajikistan in 1995, and at some point after his arrival he entered into a relationship with Ms Shalkova. In 2006 the couple had a son, and the couple's marriage was registered in 2009. Mr Dzhurayev was a member of the Union of Tajiks in Russia, a public organisation promoting cultural ties between Tajikistan and Russia.

It appears that Mr Dzhurayev lived in Russia on regularly extended temporary residence permits. However, upon temporarily leaving Russia in May 2013, he was prevented from returning by an exclusion order and a re-entry ban. The written notice simply stated that the decision had been taken on grounds of public defence, security, order or health. It did not indicate the length of the ban, or the public authority responsible.

After considerable difficulty, the applicants were able to identify the public authority responsible for the ban, the Federal Security Service of the Russian Federation (FSS), and lodged proceedings against it. The applicants complained of the ban and exclusion order, maintaining that these had disrupted their family life. However, the Perm Regional Court upheld the exclusion and re-entry ban in May 2014, finding that Mr Dzhurayev had been involved in activities threatening State security.

The applicants appealed to the Supreme Court, arguing that they had not been permitted to see any of the evidence that had served as the basis of the order, that evidence relied upon by the court had never been formally submitted, and that the Regional Court had failed to balance the relevant interests at stake. However, the Supreme Court dismissed the appeal in July 2014, finding that the Regional Court's decision had been lawful, and had appropriately balanced public and private interests.

In March 2015 Mr Dzhurayev was granted a temporary residence permit, which is valid until March 2018. He currently resides in Russia.

Relying in particular on Article 8 (right to respect for private and family life), the applicants complained that Mr Dzhurayev's exclusion order had been based on undisclosed information, and had violated their right to respect for family life.

Violation of Article 8

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 300 (costs and expenses)

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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.