



## Judgments of 31 October 2017

The European Court of Human Rights has today notified in writing nine judgments<sup>1</sup>:

four Chamber judgments are summarised below; separate press releases have been issued for two other Chamber judgments in the cases of *Činga v. Lithuania* (application no. 69419/13) and *Dragoş Ioan Rusu v. Romania* (no. 22767/08);

three Committee judgments, concerning issues which have already been submitted to the Court, including excessive length of proceedings, can be consulted on [Hudoc](#) and do not appear in this press release.

*The judgments below are available only in English.*

### Kamenos v. Cyprus (application no. 147/07)

The applicant, Costas Kamenos, is a Cypriot national who was born in 1949. He is a lawyer and lives in Nicosia. The case concerned disciplinary proceedings brought against him following his appointment as judge and then President of the Industrial Disputes Court (“the IDC”).

In 2005 the Supreme Court received a complaint alleging misconduct on the part of Mr Kamenos in the exercise of his judicial functions. Mr Kamenos was thus served with a written notice of the allegations and asked to submit comments. Following this, the Supreme Court appointed an investigating judge to look into the allegations. This judge submitted a report to the Supreme Court, together with statements he had collected from witnesses and Mr Kamenos. The Supreme Court then framed charges of misconduct against Mr Kamenos and called him to appear before the Supreme Council of Judicature (“the SCJ”), which has exclusive competence for the dismissal of judges and disciplinary matters.

Disciplinary proceedings were carried out before the SCJ, with a number of hearings taking place at which witnesses listed on the charge sheet against Mr Kamenos were heard and cross-examined by his lawyer. Mr Kamenos then set out his defence case, testifying himself and calling 36 witnesses. During these proceedings, he submitted that the Supreme Court and the SCJ had the same composition, meaning that the same judges had examined the witness statements against him, had decided to refer the case to trial, had formulated the charges against him and, acting as prosecutors, had tried the case. He argued that this was contrary to the right to a fair trial. He also raised certain preliminary objections against the charge sheet which were dismissed. In September the SCJ ultimately found that the charges had been proved and removed Mr Kamenos from office. It dismissed his objection about the fairness of the proceedings, finding that it had done its best to avoid a procedure which was prosecutory: in particular it had not assigned the duties of prosecutor to the investigating judge or put questions to the witnesses. The SCJ’s decision was final.

Relying in particular on Article 6 § 1 (right to a fair trial / hearing) of the European Convention on Human Rights, Mr Kamenos alleged that the disciplinary proceedings against him had been unfair.

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

He notably complained that he had been charged, tried and convicted by the same judges, in breach of the principle of impartiality.

**Violation of Article 6 § 1** (impartial tribunal)

**Just satisfaction:** 7,800 euros (EUR) (non-pecuniary damage) and EUR 10,000 (costs and expenses)

### M.F. v. Hungary (no. 45855/12)

The applicant, Mr M.F., is a Hungarian national who was born in 1990 and lives in Gyöngyöspata (Hungary). He is of Roma origin. The case concerned his allegation of police brutality.

In the early hours of the morning on 12 August 2010 Mr M.F. was apprehended while driving a car containing apparently stolen goods and taken to the local police station for questioning. He alleges that for the next four hours, until after 6 a.m., six police officers and two security guards all took part in ill-treating him in order to extract his confession to further offences. He alleges in particular that he was repeatedly hit and kicked and that the soles of his feet had been hit many times with a piece of wood. He also claims that one of the officers had told him that it would not matter if he died as that would mean one less Gypsy. He eventually signed a record, stating that he had been questioned for about 40 minutes and admitting three counts of theft, and was released.

The same evening Mr M.F. was examined by his local doctor at home and then at two hospitals. The local doctor did not make any medical record of her visit, but recommended that he go to hospital to have his injuries recorded. Both hospitals issued reports certifying that Mr M.F. had numerous injuries, including bruising, abrasions, contusions and swollen hands, arms and feet.

In September 2010 Mr M.F. lodged a criminal complaint alleging that he had been the victim of police brutality and that he had been repeatedly insulted on account of his Roma origin. The prosecuting authorities discontinued the investigation in December 2010, finding that his version of events was not plausible as most of the accused either had alibis or could not have been present during the 40-minute period of his questioning. His allegation of a racist motive being behind his ill-treatment was not addressed.

In 2012 Mr M.F. also brought a substitute private prosecution against the six police officers and two security guards. During these proceedings his mother, brother and a friend testified that he had had injuries when they had picked him up from the police station on the day of his release. The charges were however ultimately dropped against three of the defendants and the courts acquitted the other five due to lack of evidence.

Mr M.F. was subsequently found guilty of false accusation against one of the police officers and sentenced to 180 days' community work.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, Mr M.F. complained about being ill-treated by the police and that the authorities had failed to conduct an effective investigation into his allegations. Further relying on Article 14 (prohibition of discrimination), he also alleged that he had been ill-treated because he had been a Roma and that the investigation had not covered at all whether the ill-treatment had been racially motivated.

**Violation of Article 3** (treatment)

**Violation of Article 3** (investigation)

**No violation of Article 14 read in conjunction with Article 3** – in respect of the allegation that the treatment inflicted on Mr M.F. by the police was racially motivated

**Violation of Article 14 read in conjunction with Article 3** – on account of the authorities' failure to investigate possible racist motives behind the incident

**Just satisfaction:** EUR 10,000 (non-pecuniary damage) and EUR 4,724 (costs and expenses)

### Bauras v. Lithuania (no. 56795/13)

The applicant, Vytautas Bauras, is a Lithuanian national who was born in 1964 and lives in Vilnius. The case concerned his complaint that he had effectively been found guilty in a double-murder case in which he had been a witness, and that this prejudged ongoing criminal proceedings against him for instigating the same murders.

In 2007 Mr Bauras was officially suspected of having organised the murder of two individuals, including his business partner. In October 2009, Mr Bauras' former bodyguard, D.A., was officially suspected of having carried out the murders. He was also accused of having attempted to murder Mr Bauras in another separate incident. In the case against D.A., Mr Bauras was treated as a suspect for the first offence and granted victim status for the second.

In 2011 D.A. was found guilty of the murders. One of the pieces of evidence used to reach this conclusion was a letter addressed to Mr Bauras from D.A. This letter was given to the police by Mr Bauras. In it, D.A. explained that Mr Bauras had told him to kill his business partner, because he wanted the profit from the business. D.A. also wrote that Mr Bauras had bought him weapons and bribed judges and prosecutors so that D.A. wouldn't be prosecuted for the crimes he was carrying out for Mr Bauras. In court, D.A. claimed that the contents of the letter were false, but the court ruled that the contents of the letter were truthful. It found that the crime had been committed by D.A. upon the orders of an "individual in respect of whom a separate pre-trial investigation was opened" (referring to Mr Bauras). Mr Bauras appealed against this judgment, arguing that the court had held him guilty of organising the murder even though he was not accused of it in that case and so hadn't been given the opportunity to defend himself. His appeal was dismissed on the grounds that, being a witness, he did not have a procedural right to submit such an appeal.

In Mr Bauras' own case, he was acquitted of all the charges against him on 9 October 2014 due to lack of evidence.

Relying in particular on Article 6 § 2 (presumption of innocence), Mr Bauras argued that in the criminal proceedings against D.A. the court had concluded that he had directed the murder without giving him the opportunity to defend himself against the allegations as he had just been a witness in those proceedings. He further alleged that these conclusions had influenced his own criminal trial.

#### **No violation of Article 6 § 2**

### Krajnc v. Slovenia (no. 38775/14)

The applicant, Slavko Krajnc, is a Slovenian national who was born in 1952 and lives in Celje (Slovenia). He was a professional truck driver until he could no longer work due to epilepsy. The case concerned a reduction in his disability benefit.

In 2005 Mr Krajnc was granted a monthly allowance of 390 euros (EUR) while waiting to be reassigned to a suitable position of employment that would not put himself or others at risk on account of his epilepsy. He received this allowance for the next six years, until 2011, when he sustained a shoulder injury and the pension authorities reassessed his level of disability. Finding that his capacity to work had further reduced, the authorities granted him a disability allowance amounting to EUR 190 per month. Mr Krajnc appealed against this decision to the pension authorities, arguing that his benefit had been considerably reduced even though his disability had in fact worsened. The pension authorities rejected his appeal and he therefore lodged a claim with the labour courts. However, the courts dismissed his claim in 2012, finding that new legislation introduced in 1999 applied in his case; in particular, the new legislation did not contain the right to a waiting period allowance, but provided for a disability allowance for those, like Mr Krajnc, whose disability had worsened after 1 January 2003. He appealed, pointing out that he was unable to survive on the newly determined allowance. The higher court confirmed the lower court's position,

pointing out that his case concerned a change in the level of his disability, which had required a fresh determination of his disability benefit in accordance with the new legislation. In 2013 the Supreme Court dismissed his appeal on points of law and the Constitutional Court refused to accept his complaint.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Krajnc alleged that the reduction in his disability benefit had been excessive.

#### **Violation of Article 1 of Protocol No. 1**

**Just satisfaction:** EUR 10,000 (pecuniary and non-pecuniary damage) and EUR 2,352 (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.