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

Press Release
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ECHR 382 (2017)
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Judgments of 12 December 2017

The European Court of Human Rights has today notified in writing 22 judgments[1]:

six Chamber judgments are summarised below; a separate press release has been issued for one other Chamber judgment in the case of *Zadumov v. Russia* (application no. 2257/12);

15 Committee judgments, concerning 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 (*).

Ksenz and Others v. Russia (applications nos. 45044/06, 18796/08, 49158/09, 63839/09, 34455/10, and 36295/10)

The case concerned six Russian nationals and their allegation that they had been ill-treated after being stopped and detained by the police for either using foul language or violating traffic regulations. The applicants are: Aleksandr Ksenz, Ruslan Lebedev, Vadim Korolev, Sergey Ivanov (now deceased), Vladimir Kolistratov, and Gennadiy Sergeyev. They were born in 1986, 1987, 1988, 1969, 1989, and 1971 respectively and live/d in Pskov, Novyy Toryal in the Mariy-El Republic, Diveyevo in the Nizhniy Novgorod Region, Cheboksary, Novocheboksarsk, and Moscow respectively (all in Russia).

The applicants were all stopped by the police, either late at night or in the early hours of the morning, in separate incidents which occurred between 2005 and 2008. They spent a few hours in custody and were released, except for Mr Korolev who was released a few days later. They allege that they were punched and kicked or, in the case of Mr Kolistratov, that his face was hit against a wall, during their arrest, at the police station or both. In the subsequent medical reports all the applicants were found to have sustained injuries which were the result of impacts from hard, blunt objects.

Following the applicants' complaints of ill-treatment, pre-investigation inquiries were carried out. However, the investigating authorities, essentially citing statements made by the police officers involved, dismissed the applicants' allegations. They notably found that the applicants' injuries had either been self-inflicted or sustained as a result of the lawful use of force during arrest or "in other circumstances". The investigators' decisions refusing to open a criminal case were annulled between three and 20 times in each applicant's case by their superiors who, considering that the inquiries were incomplete, ordered new ones. The investigators' most recent refusals to initiate criminal proceedings were upheld by the domestic courts between 2005 and 2010. In one of the cases, that of Mr Lebedev, an additional inquiry was again ordered in 2013.

Before their release from custody, four of the applicants were found guilty of administrative offences and were either fined or suspended from driving because they had been drunk. Mr Ksenz was informed that he had been arrested for the criminal offence of insulting a public official.

[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, no criminal or administrative proceedings were ever brought against him. Nor were criminal proceedings brought against Mr Lebedev, who was detained for driving a car without a licence plate; administrative proceedings were brought against him a month after his release.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicants complained about the use of force by the police, also alleging that no effective investigation had been carried out into their complaints. Mr Ksenz and Mr Lebedev also alleged that their detention had been unlawful, in breach of Article 5 § 1 (right to liberty and security).

Violation of Article 3 (inhuman and degrading treatment) – in respect of all the applicants
Violation of Article 3 (investigation) – in respect of all the applicants
Violation of Article 5 § 1 – in respect of Mr Ksenz and Mr Lebedev

Just satisfaction:

- for non-pecuniary damage: EUR 26,000 to Mr Ksenz, EUR 30,000 to Mr Lebedev, EUR 10,000 to Mr Korolev, EUR 6,000 to Mr Ivanov's widow, EUR 7,000 to Mr Kolistratov, and EUR 20,000 to Mr Sergeyev for non-pecuniary damage;

- for costs and expenses : EUR 2,000 to Mr Lebedev and EUR 3,300 to Mr Korolev.

Malinin v. Russia (no. 70135/14)

The applicant, Aleksey Malinin, is a Russian national who was born in 1979 and lives in Nizhniy Novgorod Region (Russia).

Mr Malinin complained about domestic court orders that his sons should live with his former wife rather than him, and that she had been allowed to take the children to Germany, despite his opposition, where they remained.

Mr Malinin and his wife divorced in 2011 after having two sons in 2006 and 2008. After the divorce, Mr Malinin applied in 2011, 2013 and 2014 for residence orders to have the sons live with him but the domestic courts rejected all his applications in proceedings at first instance and on appeal. He was allowed contact rights in a judgment of May 2013.

In December 2014 the courts authorised Mr Malinin's ex-wife to take the children to Germany on holiday, despite Mr Malinin's objections. She applied again for permission to take them to Germany in 2015, stating that Mr Malinin had refused to give his permission for the trip. Mr Malinin in turn asked for interim measures to stop them leaving Russia while court proceedings were on-going, an application which was rejected in March 2015. In May of the same year Mr Malinin's ex-wife received permission from a court to take the children to Germany for the summer holidays.

In July 2015, the children's mother married a German national and then left for Germany with the two children. Two months later she had another child. Mr Malinin's sons are currently living in Germany with their mother, her new husband and their half-brother.

Mr Malinin tried to enforce the 2013 court decision for contact with his sons, but that was impossible because the children were in Germany. Mr Malinin's former wife subsequently began Russian court proceedings for a residence order to allow the children to live with her in Germany and he filed a counter-claim for an order that they should live in Russia with him. The residence order proceedings are still on-going.

Relying on Article 8 (right to respect for private and family life) of the European Convention, Mr Malinin complained about the issuing of a residence order in favour of the mother and about the courts allowing his ex-wife and their children to go to Germany while rejecting his application for interim measures.

No violation of Article 8 – concerning the decision to maintain the residence order allowing the children to live with their mother
No violation of Article 8 – concerning the judicial authorisation for the children to travel to Germany with their mother

López Elorza v. Spain (no. 30614/15)

The applicant, Andrés López Elorza, is a Venezuelan and Colombian national who was born in 1982 in Venezuela and is currently in detention in Valdemoro Prison (Spain) pending extradition to the United States of America, where he will be prosecuted for drug trafficking.

The case concerned a complaint that extradition would put him at risk of being sentenced to life imprisonment without parole, contrary to Article 3 of the Convention.

Mr López Elorza was arrested by the Spanish police in 2013 at the request of the United States, which had charged him in 2005 with two drugs offences, which each carried a possible sentence of life imprisonment. In March 2014 the Spanish Public Prosecutor's Office agreed to his extradition, which was approved by the domestic court in October on condition that the US authorities provided a guarantee that any life sentence would not be irreducible.

Mr López Elorza appealed unsuccessfully and in February 2015 the domestic court accepted guarantees provided by the US authorities that he would be able to seek a review of any life sentence as adequate and authorised his extradition. Mr López Elorza lodged several further appeals, which were all rejected. In June 2015 he appealed to the Constitutional Court, which, however, ruled that his case and an application for interim measures to stay the extradition proceedings were inadmissible.

In July 2015 Mr López Elorza made a request for interim measures to the Court, asking that it indicate to the Spanish Government that it should stay the extradition proceedings pending the outcome of his case before the Court. The request was granted until August the same year and the Court put questions to the Government about whether he risked a life sentence in the United States that precluded early release or release on parole and about the concrete mechanisms under US law to have any sentence reviewed.

The Government replied in July 2015, including a document prepared by the US Department of Justice. The document explained why the US authorities were seeking Mr López Elorza's extradition and laid out the sentencing procedures and possible penalties he might face. It concluded by saying that Mr López Elorza was unlikely to face the maximum sentence, however, if such a penalty was imposed there were a number of ways to have the sentence quashed, reduced or to obtain early release.

On 31 July 2015 the Court extended the interim measure and requested that the Spanish Government stay Mr López Elorza's extradition while it considered his case.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr López Elorza complained that his extradition would expose him to treatment incompatible with the European Convention as it would put him at risk of being sentenced to life imprisonment without parole.

No violation of Article 3 – in the event of Mr López Elorza's extradition to the United States

Interim measure (Rule 39 of the Rules of Court) – not to extradite Mr López Elorza – still in force until the judgment becomes final or until further order.

Süleyman Çelebi and Others v. Turkey (nos. 22729/08 and 10581/09)*

The applicants are, firstly, a trade union (the Confederation of Trade Unions of Revolutionary Workers, "the DISK") and, secondly, eight Turkish nationals, including Süleyman Çelebi (the president of the DISK).

The case concerned confrontations between the security forces and demonstrators on 1 May 2007 on the occasion of a demonstration on Taksim Square in Istanbul.

On 19 April 2007 the DISK, the Turkish Union of Doctors ("the TBB") and the Revolutionary Trade Union of Health Workers ("the DSIS") informed the governor's office of their intention to hold a demonstration on 1 May 2007 on Taksim Square (a symbolic location on account of the events of 1 May 1977, during which 34 people died). The three organisations planned to lay a wreath at the the monument to Atatürk and to hold a press conference calling for the recognition of 1 May as a public holiday (such a law was enacted on 22 April 2009).

On 30 April 2007 the Istanbul Security Directorate informed the DISK that the governor's office had refused to authorise the demonstration, but that authorisation could be granted for a wreath-laying ceremony in which only the representatives of the trade union's administrative board would take part.

On 1 May 2007 the trade unionists, including the applicants, gathered with a view to proceeding towards Taksim Square. The police ordered them to end their meeting and disperse, but the demonstrators refused to comply. The security forces then began to disperse the group but the demonstrators resisted and a confrontation developed. The police used tear gas and water hoses. Over the course of the day 234 people, including three of the applicants, were placed in police custody and detained overnight.

On different dates the applicants lodged complaints against the governor and against the Istanbul Security Director and his deputy, alleging an abuse of power. They also lodged complaints against all the members of the security forces, submitting that they had used disproportionate force in dispersing the demonstrators. Those complaints gave rise to findings that there was no case to answer.

On 27 April 2007 Mr Çelebi was charged, among other things, with incitement to take part in an illegal demonstration in his capacity as president of the DISK. He was acquitted in July 2008. A total 234 people, including three applicants, were also referred to the prosecutor's office for having taken part in a prohibited demonstration. The proceedings against them were discontinued in September 2007.

Relying in particular on Article 11 (freedom of assembly and association), the applicants complained about the security forces' intervention.

Violation of Article 11

Just satisfaction: EUR 7,500 each to Süleyman Çelebi, Musa Çam, Adnan Serdaroğlu, Kamer Aktaş, Celal Ovat, Ali Rıza Küçükosman, Gençay Gürsoy, Arzu Çerkezoğlu and the "DISK" trade union in respect of non-pecuniary damage

Çölgeçen and Others v. Turkey (nos. 50124/07, 53082/07, 53865/07, 399/08, 776/08, 1931/08, 2213/08, and 2953/08)

The case concerned seven Turkish students who had either been expelled or suspended from university after requesting Kurdish language classes.

In 2001 the applicants, seven Turkish nationals of Kurdish ethnic origin who were studying at Istanbul University, requested that Kurdish language classes be introduced as an optional module.

The university initiated disciplinary investigations against them and in February 2002 they were either suspended or expelled.

These disciplinary sanctions were, however, suspended a few months later pending administrative proceedings brought by the applicants. They were all thus re-enrolled in their respective faculties and allowed to sit exams they had missed. All but one of the students graduated between 2003 and 2007.

In the meantime, in December 2002 the administrative courts annulled the disciplinary sanctions against the applicants on the ground that they were unlawful. The courts found in particular that neither the views expressed in the students' requests nor the form in which they had been conveyed warranted such sanctions.

The applicants subsequently brought claims for compensation before the administrative courts, without success. The courts notably rejected their claims because they considered that the university authorities had allowed the students to take repeat exams, thus compensating for the exams which they had been unable to sit when suspended or expelled.

Relying in particular on Article 2 of Protocol No. 1 (right to education), the applicants complained that expelling or suspending them from university for requesting an optional Kurdish language course had been an exaggerated response on the part of the authorities.

The applicants are Mehmet Halit Çölgeçen, Mürsel Bek, Übeyt Salim, Yavuz Uçak, Mustafa Çalışkan, Münür Ay, Ruken Buket Işık and Ali Turğay. They were born in 1977, 1978, 1977, 1981, 1981, 1980, 1982, and 1980 respectively. They lived in Hakkari (Mr Çölgeçen), Bingöl (Mr Bek), Istanbul (Mr Salim, Mr Uçak, Mr Çalışkan, and Mr Turğay), Diyarbakır (Mr Ay) and Muş (Ms Işık) at the time their applications were lodged with the Court.

Violation of Article 2 of Protocol No. 1 on account of the disciplinary sanctions imposed on the applicants.

Just satisfaction: EUR 1,500 to each applicant for non-pecuniary damage

Joannou v. Turkey (no. 53240/14)

The case concerned a complaint about the excessive length of proceedings to obtain compensation for property located in northern Cyprus. The proceedings commenced in 2008 and are still pending.

The applicant, Adriani Joannou, is a British and Cypriot national who was born in 1953 and lives in Enfield (United Kingdom). In 1997 she received five plots of land in the village of Koma Tou Yialou, located in the "Turkish Republic of Northern Cyrus" (the "TRNC"), as a gift from her aunt who had owned it prior to the Turkish military intervention in 1974.

In May 2008 Ms Joannou, through her Turkish Cypriot lawyers, filed a claim with the Immovable Property Commission for compensation amounting to 1,800,000 British pounds (approximately 2,285,000 euros). The commission had been set up in 2005 following the introduction of new legislation (Law no. 67/2005) on the compensation, exchange or restitution of immovable property to which owners no longer had access in the "TRNC".

Two years later, the "TRNC" authorities submitted an opinion to the commission on Ms Joannou's claim, finding that she had failed to prove that she was the legal heir to the property and that her claim was excessive.

A number of preliminary hearings ensued before the commission over the next seven years, which have been repeatedly adjourned, essentially because the "TRNC" authorities made requests for Ms Joannou to provide additional documents concerning her property claim. These included requests: in June 2010, for a document showing that she used a Turkish Cypriot house in the South;

in April 2013, for additional certificates proving her and her aunt's identity; and, in October 2013, for clarification of the different spellings of the names of Ms Joannou's mother and aunt, the marital status and succession of her aunt as well as the status of liabilities related to the property.

Further hearings were adjourned in 2016 after Ms Joannou's lawyers withdrew from the case. Most recently that happened in March 2017 because the "TRNC" representatives argued that she could not be considered as a legal heir to the property as her aunt had given it to her while she was still alive.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), Ms Joannou complained, inter alia, that the proceedings before the commission concerning compensation for her property had been protracted and ineffective.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 7,000 (non-pecuniary damage) and EUR 6,325 (costs and expenses)

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