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

Press Release
issued by the Registrar of the Court

ECHR 144 (2018)
18.04.2018

Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 11 judgments on Tuesday 24 April 2018 and 20 judgments and / or decisions on Thursday 26 April 2018.

*Press releases and texts of the judgments and decisions will be available at **10 a.m.** (local time) on the Court's Internet site (www.echr.coe.int)*

Tuesday 24 April 2018

Baydar v. the Netherlands (application no. 55385/14)

The applicant, Ilkay Baydar, was born in 1968 and lives in Apeldoorn. He holds both Dutch and Turkish nationality.

The case concerns his complaint about the Supreme Court's refusal, based on summary reasoning, to refer his request for a preliminary ruling to the Court of Justice of the European Union (CJEU).

In October 2011 Mr Baydar was convicted of transporting heroin and of people trafficking and given a sentence of 40 months' imprisonment. The judgment was upheld on appeal, although the Supreme Court reduced the sentence to 34 months on the grounds of the excessive length of the subsequent cassation proceedings. Mr Baydar, with reference to the people-trafficking conviction, requested the referral of a question to the CJEU on the definition of the word "residence" in EU law, as applied in the national Criminal Code, but the Supreme Court refused.

Relying on Article 6 (right to a fair trial) of the European Convention on Human Rights, Mr Baydar complains about the Supreme Court's refusal to refer his request to the CJEU and that it failed to provide adequate reasoning for its decision although it had a duty to do so.

Ovidiu Cristian Stoica v. Romania (no. 55116/12)

The applicant, Ovidiu Cristian Stoica, is a Romanian national who was born in 1977 and lives in Bacău (Romania).

The case concerns Mr Stoica's conviction by an appeal court of disseminating obscene images (photographs of sexual intercourse between him and his former partner).

In 2010 the prosecution opened an investigation into Mr Stoica following complaints from X (Mr Stoica's former partner) and from the mother of Y (Y being X's current partner) for the transmission of photographs of X and himself engaged in sexual intercourse. Those images had been sent by email to Y and to her and X's colleagues, and by post to Y's mother; they had also been placed in the letter boxes of residents of the block in which Y's mother lived. During the investigation several witnesses were questioned by the police, including Y's mother's neighbours.

At first instance, the Bucharest Court of Appeal acquitted Mr Stoica on the grounds that the evidence in the case file did not clearly show that Mr Stoica had actually committed the acts with which he had been charged. On a prosecution appeal, the High Court of Cassation and Justice set that judgment aside and convicted Mr Stoica on charges of disseminating obscene material, sentencing him to a suspended six-month prison sentence. Following that conviction Mr Stoica was struck off the Order of Notaries.

Relying on Article 6 § 1 (right to a fair trial), Mr Stoica complains about his criminal conviction on the grounds that the appeal court convicted him without having questioned the witnesses, whereas the

court of first instance had acquitted him on the basis of the same evidence, considering it insufficient.

Lozovyye v. Russia (no. 4587/09)

The applicants, Andrey Lozovoy and Tamara Lozovaya, husband and wife, are two Russian nationals who were born in 1952 and 1954 respectively. They live in the town of Belomorsk in the Republic of Karelia (Russia).

The case concerns their complaint that the authorities failed to inform them that their son had been murdered in St Petersburg on 1 December 2005.

They eventually learned that criminal proceedings had been instituted against their son's killer and contacted the investigator in charge of the case in February 2006. Their son had however in the meantime been buried as unclaimed. A few weeks later they were allowed to exhume their son's remains and have him transported to Belomorsk where they had a burial.

They brought proceedings for compensation of pecuniary and non-pecuniary damage resulting from the investigator's failure to promptly notify them of their son's death, which were dismissed.

The Court will examine the parents' complaints about the authorities' failure to duly notify them of their son's death under Article 8 (right to respect for private and family life).

Benedik v. Slovenia (no. 62357/14)

The applicant, Igor Benedik, is a Slovenian national who was born in 1977 and lives in Kranj (Slovenia).

The case concerns the Slovenian police's failure to obtain a court order to access subscriber information associated with a dynamic IP. This led to the applicant being identified after he had shared files over a peer-to-peer network, including child pornography.

In August 2006 the Slovenian police, acting on information received from the Swiss law-enforcement authorities, asked a local Internet service provider for information about a user who had been assigned a dynamic IP address that had been detected on a file-sharing network.

The police, without obtaining a court order, used a provision of the Criminal Procedure Act which allowed them to request information from an electronic communication provider about the user of a certain means of electronic communication whose details were not available in the relevant directory. The company handed the information over.

The subscriber information associated with the dynamic IP address in question ultimately led to Mr Benedik being identified and convicted in December 2008 of the display, manufacture, possession or distribution of child pornography.

The domestic courts rejected his argument in his appeals that the police had needed a court order to obtain the subscriber information. In particular, the Constitutional Court found that subscriber information linked to a dynamic IP address was in principle protected by constitutional privacy safeguards. However, it was considered that by revealing his IP address and the content of his communications on the file-sharing network Mr Benedik had waived his right to protection of his privacy.

Mr Benedik challenges the domestic proceedings under Article 8 (right to respect for private and family life, the home and the correspondence).

Fatih Taş v. Turkey (3) (no. 45281/08)
Fatih Taş v. Turkey (no. 4) (no. 51511/08)

The applicant, Fatih Taş, is a Turkish national who was born in 1979 and lives in Istanbul.

The two cases concern criminal proceedings brought against Mr Taş when he was the owner and editor-in-chief of a publishing house (Aram Basım ve Yayıncılık), following the publication of three books.

In the first case the book in question consisted of memoirs of 17 members of the PKK (the Kurdistan Workers Party), an illegal organisation in Turkey. The authorities seized copies of the book in September 2003 and Mr Taş was charged with disseminating propaganda in favour of a terrorist organisation. He was subsequently found guilty as charged, the domestic courts holding that certain passages in the book constituted incitement to violence and to terrorism. Ultimately, however, in April 2011 the proceedings were discontinued as time-barred. Mr Taş was not detained or remand, nor did he serve any sentence in the context of the proceedings against him.

In the second case, concerning another book, Mr Taş was again convicted of disseminating propaganda in favour of the PKK. The courts found that as publisher of the book he had been guilty of praising the PKK and its leader in order to attract more sympathisers to the organisation. Similarly however, the proceedings were discontinued in 2012 as time-barred. He was also given another conviction in 2002, upheld in 2003, for aiding and abetting the PKK as regards another book.

Relying on Article 10 (freedom of expression), Mr Taş alleges in particular that the criminal proceedings brought against him breached his freedom of expression. In the first case he also alleges under Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy) that the length of the proceedings was excessive and that there was no effective remedy under Turkish law for him to contest the length of the proceedings.

Sadrettin Güler v. Turkey (no. 56237/08)

The applicant, Sadrettin Güler, is a Turkish national who was born in 1962 and lives in Istanbul.

The case concerns Mr Güler's complaint that he was disciplined for being absent from his job after he attended a May 1 union demonstration.

Mr Güler, a civil servant, took part in a demonstration organised by the KESK public sector trade union on 1 May 2008. He was given an official warning for being absent from work without leave. His appeals against the decision were dismissed.

Relying in substance on Article 11 (freedom of assembly and association) and Article 13 (right to an effective remedy), Mr Güler complains about the disciplinary sanction imposed on him for taking part in trade union activities.

The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.

These rulings can be consulted from the day of their delivery on the Court's online database HUDOC.

They will not appear in the press release issued on that day.

Tonello v. Hungary (no. 46524/14)
Bartulienė v. Lithuania (no. 67544/13)
Miuţi v. Romania (no. 49481/13)
Geletey v. Ukraine (no. 23040/07)

Thursday 26 April 2018

Čakarević v. Croatia (no. 48921/13)

The applicant, Ilinka Čakarević, is a Croatian national who was born in 1954 and lives in Rijeka (Croatia).

The case concerns the applicant being ordered to repay allegedly wrongly awarded unemployment benefits.

Ms Čakarević lost her job in December 1995 after her employer became insolvent. She was awarded unemployment benefit in November 1996, which was renewed until further notice in December 1997. However, in March 2001 the unemployment office found that she had been receiving the payments beyond the period allowed by law. It terminated her entitlement to the benefit, with effect from June 1998, and she was ordered to repay about 2,600 euros.

The domestic courts ultimately upheld the repayment order, with the Constitutional Court dismissing two constitutional complaints by the applicant in March 2013.

Ms Čakarević complains about the repayment order under Article 1 of Protocol No. 1 (protection of property) to the Convention and of a violation of her right to respect for her private life under Article 8.

Hoti v. Croatia (no. 63311/14)

The applicant, Bedri Hoti, was born in Kosovo in 1962 to an Albanian couple who had fled their home country as political refugees. At the time Kosovo was an autonomous province of Serbia in the former Socialist Federal Republic of Yugoslavia ("the SFRY"). Aged 17, Mr Hoti left Kosovo and settled in Novska in Croatia, also a part of the SFRY at the time. He has been living there ever since. Although he has lived for a number of years under the temporary residence regime provided by the authorities in Kosovo related to his status as an Albanian refugee, a status which was recognised throughout the former SFRY, according to his birth certificate Mr Hoti actually has no nationality.

The case concerns his complaint that he has been unable to regularise his residence status in Croatia.

Throughout the years Mr Hoti has applied for Croatian citizenship and a permanent residence permit, without success. His challenges to these decisions by the Ministry of the Interior before the administrative courts have also been dismissed.

He is currently trying to regularise his residence status in proceedings under the Aliens Act whereby it is possible to extend his stay every year on humanitarian grounds, either by providing a valid travel document or at the discretion of the Ministry. If he reaches a period of five years uninterrupted stay under this regime, he would qualify for a permanent residence permit. However, he has not so far qualified as his residence, which was temporarily extended on humanitarian grounds between 2011 and 2013, was interrupted in 2014 when the Ministry refused to allow an extension because he had failed to provide a valid travel document. Most recently, in 2015 and 2016 the Ministry gave its consent for an extension of his temporary stay.

Mr Hoti has no family in Croatia. His parents have died and he has lost contact over the years with two sisters who live in Germany and Belgium.

Relying on Article 8 (right to respect for private and family life and the home), Mr Hoti alleges that he has not had an effective possibility to regularise his residence status in Croatia, creating a situation of uncertainty for him, which has had an impact on his private life, namely difficulties in finding employment, contracting health insurance or regulating his pension rights. He further alleges under Article 14 (prohibition of discrimination), in conjunction with Article 8 and Article 1 of Protocol No. 12 (general prohibition of discrimination), that he has been discriminated against.

Andersen v. Greece (no. 42660/11)

The applicant, Ilyas Andersen, is a Norwegian national who was born in 1960 and lives in Malmö (Sweden). The case concerns allegations of ill-treatment suffered by Mr Andersen while in police custody.

In 2008 Mr Andersen was arrested by the police in Thessaloniki (Greece) for robbery. At first instance he was sentenced to six months and 10 days' imprisonment. On appeal the offences were declared statute-barred. Mr Andersen alleged that he had been the victim of ill-treatment during his time in custody. He therefore applied to the Ombudsman and lodged a complaint with the Public Prosecutor's Office. The administrative investigation concluded that Mr Andersen had fallen from a wall while attempting to escape and that the police officers had had to use force in order to arrest him. The prosecution dismissed Mr Andersen's complaint on the grounds that the injuries had been justified by the violence necessitated by his arrest.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Andersen alleged that he had suffered violence at the hands of the police officers while in custody. He also complained about the administrative and judicial investigations.

Mohamed Hasan v. Norway (no. 27496/15)

The applicant, Ivan Mohamed Hasan, is an Iraqi national who was born in 1979 and lives in Norway.

The case concerns the removal of the applicant's parental rights over her two daughters and their adoption by a foster family against her wishes.

Ms Mohamed Hasan moved to Norway in 2006 after marrying an Iraqi-born man who had moved there in 1999. They had two daughters, born in February 2008 and June 2010 respectively.

She was involved with the childcare authorities for several years from 2009 owing to violence from her husband. She spent time in crisis centres with her first daughter and the authorities took several decisions about the family, including restricting the husband's access to the applicant and their daughter. In November 2010 the two children were placed in an emergency foster home. In June 2011, the children were abducted by two masked people while they were having a contact meeting with the applicant, who was injured in the attack. The children were later found in a flat and the father admitted he had orchestrated the abduction attempt.

Later in June 2011 the County Social Welfare Board issued an order, which was upheld on appeal, for both children to be taken into care in separate foster homes at secret addresses and no contact was allowed between them and their parents. A further decision was taken in February 2014 to keep the children in foster care and to allow their adoption by their foster parents as being in their best interests, a decision which was upheld on appeal by the City Court in September 2014. The domestic courts found in particular that the applicant would not be able to protect the children from their father's violence and took account of the children's attachment to their foster parents after an extended period in care. The applicant and her husband were both refused leave to appeal.

Ms Mohamed Hasan complains under Article 8 (right to respect for private and family life) about the decision to remove her parental authority over her two children and to authorise their adoption.

Gulamhussein and Tariq v. the United Kingdom (nos. 46538/11 and 3960/12)

The applicants are Bilal Gulamhussein, a dual British and Yemeni national born in 1967 and Kashif Tariq, a British national born in 1979. Both Mr Gulamhussein and Mr Tariq live in London.

The case concerns the withdrawal of the applicants' security clearances on the grounds of being associated with terrorism, leading to their dismissal from their jobs as civil servants in 2011.

Both Mr Gulamhussein and Mr Tariq were working for the Home Office's immigration service when their security clearances were withdrawn, in May 2005 and December 2006 respectively. Mr Gulamhussein was told that he had been identified as a close associate of a network of suspected Islamic extremists who supported the insurgency that was going on at the time in Iraq. Mr Tariq was informed that his clearance had been withdrawn because members of his family were suspected of plotting a terrorist attack, which could put him at risk of being subjected to undue influence.

Mr Gulamhussein and Mr Tariq appealed against the decisions to remove their clearances to the Security Vetting Appeal Panel, but their cases were dismissed in January 2011 and November 2010 respectively. Mr Gulamhussein also failed in his challenge to the Panel's procedures on the grounds of their not being in conformity with the right to a fair trial under the European Convention for including proceedings that were closed to him and his legal representatives.

Mr Tariq brought a case with the Employment Tribunal in March 2007, alleging discrimination on the grounds of race and religion, including that the Home Office had relied on stereotypical assumptions about him, Muslims and individuals of Pakistani origin being susceptible to undue influence. The proceedings before the tribunal were based on open and closed material, and a legal dispute about what material should be in which domain went to the Employment Appeals Tribunal, the Court of Appeal and the Supreme Court, which resulted in more open evidence being made available. His Employment Tribunal case was eventually dismissed in July 2014.

Both applicants rely on Article 6 § 1 (right to a fair hearing). Mr Gulamhussein complains about the procedure before the Security Vetting Appeal Panel. Mr Tariq alleges that the Employment Tribunal procedure interfered with his rights to an adversarial hearing, to equality of arms and to a reasoned decision.

Khaksar v. the United Kingdom (no. 2654/18)

The applicant, Turyalai Khaksar, is an Afghan national, who was born in 1990 and lives in Uxbridge (the UK).

The case concerns his complaint about his threatened removal to Afghanistan.

Aged 14, Mr Khaksar was seriously injured in a bomb blast in Kunar province. He has suffered from continuous pain and bleeding caused by malformations on his neck and back ever since. Four years later he left Afghanistan for the UK.

He claimed asylum. However, in 2015 the Secretary of State for the Home Department in the UK refused his application, finding in particular that his medical condition was not at such a critical stage that it would be inhumane to remove him and that in any case suitable, if not equal, treatment was available in Afghanistan.

Mr Khaksar appealed to the domestic courts, without success. He then made further submissions in 2017 to the Secretary of State, following a decision by the European Court concerning a Georgian national suffering from leukaemia and tuberculosis who was facing deportation to his home country[1]. The Secretary of State considered the submissions, but decided that they did not amount to a fresh claim. No appeal against this decision was possible, and Mr Khaksar did not seek permission to apply for judicial review of this decision before the High Court.

Mr Khaksar relies on Article 8 (right to respect for private and family life) and Article 3 (prohibition of inhuman or degrading treatment).

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Skorić and Others v. Croatia (nos. 51544/15, 13579/16, 21997/17, and 35105/17)
Sangoi v. Germany (no. 43976/17)
Boutos v. Greece (no. 63436/13)
Finitsis v. Greece (no. 5686/14)

[1] Paposhvili v. Belgium (application no. 41738/10), Grand Chamber judgment of 13 December 2016.

Kapniki Michailidis SA v. Greece (no. 64050/14)
Mohor v. Greece (no. 37980/12)
Theocharis v. Greece (no. 2438/13)
Tsarpelas v. Greece (no. 74884/13)
Blaczkowski v. Poland (no. 23379/10)
Jaworski v. Poland (no. 34449/16)
Sępczyński v. Poland (no. 78352/14)
Somla v. Poland (no. 39801/15)
Dominka v. Slovakia (no. 14630/12)
Kiani and Gulamhussein v. the United Kingdom (nos. 2428/12 and 18509/13)

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