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

Press Release
issued by the Registrar of the Court

ECHR 354 (2018)
23.10.2018

Judgments of 23 October 2018

The European Court of Human Rights has today notified in writing 31 judgments[1]:

11 Chamber judgments are summarised below; separate press releases have been issued for four other Chamber judgments in the cases of *Guerni v. Belgium* (application no. 19291/07), *Assem Hassan Ali v. Denmark* (no. 25593/14), *Levakovic v. Denmark* (no. 7841/14), and *Arrozpide Sarasola and Others v. Spain* (nos. 65101/16, 73789/16, and 73902/16);

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

M.T. v. Estonia (application no. 75378/13)

The applicant, M.T., is a stateless person who was born in 1962 and lives in Tallinn. She has lodged the application on behalf of her son, O.T., who spent more than five years in a psychiatric institution. The case concerned her complaint about the proceedings for review of her son's internment.

The courts ordered O.T.'s placement in a psychiatric hospital in May 2011. They based the order on a psychiatric report of November 2010 which found that he was suffering from paranoid schizophrenia and, following a sexual offence involving a 10-year old girl, posed a danger to society.

The applicant, who had been appointed his legal guardian, brought proceedings before the courts to discontinue his treatment.

All her requests were however dismissed.

The courts essentially relied on an opinion drawn up in December 2012 by O.T.'s doctor and the head of the department at the hospital where he was being treated finding that his mental condition had not changed. They also heard the head of the department, the applicant and her son at a hearing in 2013, and found that it was not necessary to order a fresh external expert opinion, as requested by the applicant.

In those proceedings, the applicant also unsuccessfully complained that her son could not himself challenge in court the necessity of his further treatment.

Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) of the European Convention of Human Rights, the applicant complained in particular that the domestic courts' review of her son's psychiatric internment had been based on an opinion by the hospital where her son had been detained, without any independent or impartial examination. She also complained that her son had not had access to judicial review to challenge his detention.

No violation of Article 5 § 4

[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

Bradshaw and Others v. Malta (no. 37121/15)

The applicants in this case are 24 Maltese nationals and a company based in Malta. The case concerned a multi-storey property owned by the applicants in Valletta which was rented out as a band club.

The applicants inherited the property and, under rent-control legislation in Malta, are obliged to renew each year the lease their ancestors entered into in 1946 and are not allowed to demand an increase in rent.

In 2011 they brought constitutional redress proceedings to complain that they were being denied the use of their property without adequate compensation. The first-instance court found in their favour, but this judgment was overturned on appeal in 2014. The Constitutional Court found in particular that there had been no violation of the applicants' rights because their ancestors had entered into the rental agreement voluntarily and in full knowledge of the consequences. In 2016, it also rejected the applicants' request for a re-trial.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention, the applicants argued that the State had failed to strike the right balance between their right to enjoy their property and the community's interest in protecting band clubs, in particular because the amount of rent they received was significantly lower than the market value of the premises. Further relying on Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1, they also alleged that they were being discriminated against because they had to renew their rent agreement on a yearly basis, while, under amendments to the law made in 2009, others who leased out property for commercial use would be freed from this obligation in 2028.

Violation of Article 1 of Protocol No. 1
No violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1

Just satisfaction: 592,000 euros (EUR) for pecuniary damage, EUR 8,000 for non-pecuniary damage, and EUR 10,700 costs and expenses to the applicants jointly

Lady S.R.L. v. the Republic of Moldova (no. 39804/06)*

The applicant company, Lady S.R.L., is a limited liability company founded under Moldovan law and based in Chişinău.

The case concerned the annulment of a sales contract for the privatisation of premises which the applicant company had purchased from Chişinău municipality.

On 15 January 2004, through the Privatisation Department, the State sold the applicant company premises with a floor area of 244.50 sq. m at 55 A, P.R. Street in Chişinău. In November 2004, the land registry office registered the title deeds purchased by the applicant company.

On 18 January 2005 the company S. brought an action against the applicant company and the Privatisation Department seeking the annulment of the sales contract of 15 January 2004 and the expulsion of the applicant company from the premises. The Economic Court of Appeal allowed that action, declaring the sales contract null and void. It held that according to a final judgment of the Supreme Court of 27 May 2004 – delivered in the framework of another legal dispute between Chişinău municipality and a different company – the land on which the premises were located had been transmitted to the company S. for demolition and rebuilding works.

On 1 March 2006 the applicant company appealed, unsuccessfully, to the Supreme Court. It ordered the State to refund the purchase price of the premises (approximately 9,000 euros) to the applicant company. The applicant company's title deeds were struck out of the property register.

Relying in particular on Article 6 § 1 (right to a fair trial), the applicant company complained of the unfairness of the proceedings on the grounds that the outcome of its case had been anticipated in the framework of another set of proceedings in which it had not been asked to participate.

No violation of Article 6 § 1

Petrov and X v. Russia (no. 23608/16)

The applicants, Daniil Petrov and X, father and son, are Russian nationals who were born in 1975 and 2012. Mr Petrov lives in St Petersburg, while his son lives in in the Moscow Region.

The case concerned Mr Petrov's legal efforts to have his son live with him.

Mr Petrov's wife left him in April 2013, taking their son with her to live in Nizhniy Novgorod, 1,000 km away. She then instituted divorce proceedings in court and applied for a residence order for their son. The courts granted the divorce and her application for the residence order in April 2014. They relied on a report by the Nizhniy Novgorod childcare authorities finding that it was better for X, given his young age, to live with his mother. The childcare authorities also assessed the mother's living conditions and financial situation, which they considered good, and took into account that she was on parental leave and still breastfeeding.

Mr Petrov appealed, arguing that St Petersburg had better living conditions and opportunities for child development. He also submitted that there were documents to prove that his former wife was no longer breastfeeding and that she was no longer on parental leave, but had resumed work. However, the courts upheld the April 2014 judgment.

In those proceedings the domestic courts refused to examine Mr Petrov's application for a residence order in respect of his son, finding that his claim had been submitted too late.

In separate proceedings, Mr Petrov was subsequently granted contact rights and awarded compensation for the excessive length of the residence and contact proceedings.

Relying on Article 8 (right to respect for family life), the applicants complained that the courts had not provided relevant and sufficient reasons for their decision to grant the residence order in respect of X to the mother. Further relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 8, they also complained that the decision had amounted to discrimination on grounds of sex, alleging that residence orders for children under 10 had often gone in the favour of mothers.

Lastly, the applicants submitted under Article 34 (right of individual petition) and Article 38 (obligation to provide necessary facilities for the examination of the case) that the Representative of the Government to the European Court of Human Rights in their case had been biased and had concealed certain documents because he had been a close acquaintance of the father of Mr Petrov's ex-wife.

No violation of Article 34
No violation of Article 38
Violation of Article 8
No violation of Article 14

Just satisfaction: EUR 12,500 jointly to Mr Petrov and X for non-pecuniary damage, and EUR 1,000 to Mr Petrov for costs and expenses

Produkcija Plus storitveno podjetje d.o.o. v. Slovenia (no. 47072/15)

The applicant company, Produkcija Plus storitveno podjetje d.o.o., is a private media company whose registered office is in Ljubljana.

The case concerned two sets of court proceedings conducted under the Prevention of the Restriction of Competition Act, namely proceedings concerning the imposition of a fine obstructing an inspection and proceedings concerning a violation of competition rules.

In August 2011 the Competition Protection Office opened a case against the applicant company after a complaint from two television stations that it had abused its dominant position.

The Competition Office (later called the Competition Agency) decided to inspect the applicant company's premises. In September 2011 it issued an inspection report, noting that the company had in various ways refused to cooperate with the officials and had asked them to leave the premises. The officials had called the police to assist them in carrying out the inspection, which had then continued with the company's cooperation.

In February 2012 the Competition Office fined the company 105,000 euros (EUR) for obstructing the inspection. The company appealed and requested an oral hearing but in November 2013 the Supreme Court dismissed the action.

In the proceedings concerning a violation of competition rules, the Competition Agency found that the company had been abusing a dominant position in the television advertising market. The Supreme Court dismissed an action by the company and upheld the Agency's decision refusing to have a public hearing. In subsequent minor offence proceedings, the Agency in July 2014 fined the company EUR 4.99 million for breaching competition rules and imposed fines on three individuals. The minor-offence decision was later set aside by the domestic courts and the minor offence proceedings were discontinued.

The applicant company complained in particular, under Article 6 (right to a fair trial), that the proceedings on a violation of competition rules and the proceedings imposing a fine for obstructing the inspection had been unfair because of the lack of oral hearings.

Violation of Article 6 § 1 – concerning the fairness of the proceedings regarding the imposition of a fine for the obstruction of an inspection

Just satisfaction: EUR 52,500 (pecuniary damage) and EUR 10,000 (costs and expenses)

Bilinmiş v. Turkey (no. 28009/10)*

The applicants, Mehmet Emin Bilinmiş and Perihan Bilinmiş, are Turkish nationals who were born in 1983 and 1982 respectively and live in İzmir (Turkey).

The case concerned the death of the applicants' newborn children in a public hospital. According to expert reports, one of the babies died from a hospital-acquired infection.

On 4 September 2008 Mrs Bilinmiş gave birth to twins (Aleyna and Tuana), who were placed in an incubator. Aleyna died on 13 September 2008.

On 20 September 2008 13 babies, including Tuana, died after being treated with a contaminated solution of "total parenteral nutrition". Tuana's parents lodged a criminal complaint and an inspector was appointed by the Health Ministry to conduct a preliminary investigation. However, the expert reports submitted were unable to identify the exact source of the contamination. The inspector therefore concluded that there was no evidence of professional negligence or incompetence on the part of the medical staff. The District Governor of Konak (İzmir) subsequently refused to institute criminal proceedings. In November 2009 the public prosecutor's office issued a decision not to prosecute.

In April 2010 Mr and Mrs Bilinmiş brought a civil action for compensation which is still pending before the İzmir Administrative Court.

Relying in particular on Article 2 (right to life), Mr and Mrs Bilinmiş alleged that their newborn children had died as a result of negligence on the part of the medical staff. They also complained about the length of the proceedings and of the lack of an effective investigation.

Violation of Article 2 (investigation)

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 1,741 (costs and expenses)

Elvan Alkan and Others v. Turkey (no. 43185/11)*

The three applicants are Turkish nationals who live in Ağrı (Turkey). Nusret Alkan and his wife Besrayi Alkan were born in 1965. Their daughter, Elvan Alkan, was born in 1993.

The case concerned an allegation of medical negligence: since a medical procedure carried out in a local dispensary, Elvan Alkan has suffered from a disorder known as “drop foot”.

In October 2000, suffering from an obstruction of the lower airways, Elvan Alkan, who was aged seven at the time, was examined by a doctor at the local dispensary in Doğubeyazıt (Ağrı). The doctor prescribed, among other medicines, 75 mg of Voltaren in the form of an injectable solution.

After the nurse had injected the medication, Elvan Alkan developed an intense pain in her left foot and fell to the ground. The doctor and nurse told the parents that this reaction was simply due to a burning sensation caused by the injection. The child was taken home. The following day, as she was no longer able to walk, she was taken to Iğdır public hospital, where the doctors diagnosed a case of “drop foot” caused by an injury to the sciatic nerve. On an unspecified date the applicants brought criminal proceedings, which ended in the acquittal of the doctor and nurse. In February 2002 they brought a civil action for compensation, which was rejected by the Administrative Court. That decision was upheld in January 2010 by the Supreme Administrative Court. In March 2011, despite an opinion to the contrary from Principal State Counsel at the Supreme Administrative Court, an application by the applicants for rectification of that judgment was likewise rejected.

Relying on Article 8 (right to respect for private and family life), the applicants alleged that Elvan Alkan’s permanent disability, assessed at 28%, had been the result of medical negligence. They also complained that the domestic remedies had been ineffective.

Violation of Article 8

Just satisfaction: EUR 7,500 (non-pecuniary damage) to the applicants jointly

Erkan Birol Kaya v. Turkey (no. 38331/06)*

The applicant, Erkan Birol Kaya, is a Turkish national.

The case concerned an alleged instance of medical negligence which, in Mr Kaya’s view, resulted in his leg being amputated.

Following a traffic accident in Turkey on 19 July 1998, Mr Kaya underwent several knee operations in Turkish hospitals. A month after the accident he travelled to London, where his left leg was amputated. In April 1999, claiming to be the victim of medical negligence, he brought a civil action for compensation in the Antalya Administrative Court. His claims were dismissed. The Supreme Administrative Court upheld that judgment in February 2003.

Mr Kaya alleged interference with his physical integrity and complained about the rejection of his compensation claim. He also argued that the expert report on which the Turkish courts had based their decisions had failed to shed light on the causes of his amputation. In addition, Mr Kaya complained that the domestic courts had not taken into account his criticisms concerning the report in question and had not heard evidence from witnesses before ruling on the merits of the case. The

Court examined Mr Kaya's complaints under Article 8 (right to respect for private and family life) of the Convention.

No violation of Article 8 (right to respect for private life)
Violation of Article 8 (investigation)

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

Mehmet Duman v. Turkey (no. 38740/09)

The applicant, Mehmet Duman, was born in 1975. He is currently serving a sentence of life imprisonment in Diyarbakır Prison.

The case concerned Mr Duman's complaint about being found guilty of attempting to undermine the constitutional order of the State on the basis of statements made under duress in the absence of a lawyer, which he later retracted.

Mr Duman was arrested in September 1994 on suspicion of membership of an illegal organisation, Hizbullah.

He alleges that he was tortured while in police detention, which lasted 22 days. Subsequently, the Diyarbakır Public Prosecutor took statements from him in the absence of a lawyer, when he admitted being involved in certain Hizbullah activities. He later retracted the statements, saying they had been made under duress. He maintained that stance throughout the proceedings, which lasted from 1994 until February 2007, when the Diyarbakır Assize Court convicted him of taking part in the killing of 19 people and of injuring eight others on behalf of Hizbullah. He was sentenced to life imprisonment.

The court relied, among other things, on his testimony to the police and public prosecutor, reports of the reconstruction of events and the on-site inspection, and statements by some of the other defendants and a witness. It rejected the applicant's contention that he had been tortured while in police custody as a medical report of October 1994 had found no traces of ill-treatment on him. The court's judgment shows that 30 other defendants either fully or partially retracted confessions during the trial. In April 2009 the Court of Cassation rejected an appeal by the applicant.

Relying in particular on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), Mr Duman complained that he had been denied the assistance of a lawyer while in police custody and that the trial court had convicted him on the basis of police statements which he alleged had been obtained by torture.

Violation of Article 6 §§ 1 and 3 (c) - on account of the use by the trial court of evidence allegedly obtained under duress and in the absence of a lawyer

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

Musa Tarhan v. Turkey (no. 12055/17)*

The applicant, Musa Tarhan, is a Turkish national who was born in 1955 and lives in Konya (Turkey).

The case concerned expropriation proceedings in which both parties to the dispute (the administrative authorities and the individual whose property had been expropriated) had been ordered to pay the opposing party a fixed amount to cover the costs of legal representation.

In December 2008 the water authority decided to expropriate a plot of land belonging to Mr Tarhan in Hadim (Turkey), the value of which it assessed at 843.58 Turkish liras (TRY). As the parties failed to

reach agreement on the amount of compensation for the expropriation, the administrative authorities applied to the District Court.

In September 2014 the District Court ordered the transfer of the property, determining the amount of compensation at TRY 2,515.38. The court also ordered both parties to pay TRY 1,500 to the opposing party to cover the cost of legal representation. Mr Tarhan lodged an appeal on points of law against that decision, without success. In July 2016 he lodged an appeal with the Constitutional Court, which was likewise rejected.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), Mr Tarhan complained that he had not received compensation reflecting the value of his property as he had been required to pay the cost of the administrative authorities' legal representation.

Violation of Article 1 of Protocol No. 1

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by Mr Tarhan. It further awarded him EUR 400 for pecuniary damage and EUR 500 for costs and expenses.

Sagan v. Ukraine (no. 60010/08)*

The applicant, Valentyna Sagan, is a Ukrainian national who was born in 1956 and lives in Lluxent (Spain).

The case concerned the eviction of Mrs Sagan and her husband from the flat that had been provided by the secondary school which had employed them, an intrusion into the premises in their absence and the destruction of some of their possessions.

In 1979 the secondary school where Mrs Sagan and her husband were working provided them with a one-room flat. In 1992 the Khorostkiv local authority provided them with a different three-room flat for an indefinite period. As they considered the second flat to be too small, Mrs Sagan and her husband decided that their two children should live there, while they remained in the first flat. In 2002 and 2005 they resigned from their posts at the school but continued to live in the first flat. They subsequently moved abroad and handed over the flat to a neighbour.

In 2006 the school trade-union committee allocated the flat to one of its employees and decided to draw up an inventory of the items belonging to Mrs Sagan's family so that they could be moved. These decisions were transcribed in report no. 7. In the absence of Mrs Sagan and her husband, several people, including the head teacher of the school, entered the flat by forcing the locks. They moved the items that were in there to a locked room. The new occupant then moved into the flat.

In 2007 Mrs Sagan and her husband returned to Ukraine and lodged a criminal complaint, alleging that some of their possessions that had been left in the flat had been burnt or thrown away by the new occupant. The police carried out an investigation but the authorities ultimately decided not to bring a prosecution on the grounds that the constituent elements of an offence had not been made out. In the meantime, Mrs Sagan and her husband brought a civil action against the school, the new occupant and the new occupant's wife, but their claims were dismissed. The courts took the view that the items that had been left in the flat were of little value and that the family had lost the right to use the first flat in 1992, when they had acquired the right to use another flat.

Relying in particular on Article 8 (right to respect for private and family life and the home), Mrs Sagan notably complained of an intrusion into the flat when she had been absent.

Violation of Article 8 - on account on the intrusion on 22 February 2007 in the first flat

Just satisfaction: EUR 4,500 (non-pecuniary damage) and EUR 870 (costs and expenses)

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Patrick Lannin (tel: + 33 3 90 21 44 18)
Somi Nikol (tel: + 33 3 90 21 64 25)