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

Press Release
issued by the Registrar of the Court

ECHR 351 (2018)
25.10.2018

Forthcoming judgments

The European Court of Human Rights will be notifying in writing 16 judgments on Tuesday 30 October 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 30 October 2018

Jatsõšõn v. Estonia (application no. 27603/15)

The applicant, Indrek Jatsõšõn, is an Estonian national who was born in 1985 and lives in Estonia.

The case concerns his complaint about the cramped and unsafe conditions in a prison van intended to take him to his grandmother's funeral.

In 2013, when he was serving a prison sentence for robbery and violence against a prison official, he was granted prison leave to attend his grandmother's funeral.

However, he did not go to the funeral because, as he later complained to the prison authorities and in court proceedings, he had sat in the van compartment, found it too small and unsafe as there was no seat belt, and had decided to go back to prison. His complaints for damages were dismissed by domestic courts. The courts found in particular that Mr Jatsõšõn had refused to be transferred and had therefore never been subjected to the conditions he described.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Mr Jatsõšõn complains in particular that the small compartment in the prison van without a seat belt or handles was inhuman and degrading and made him miss his grandmother's funeral.

Gestur Jónsson and Ragnar Halldór Hall v. Iceland (nos. 68273/14 and 68271/14)

The applicants, Gestur Jónsson and Ragnar Halldór Hall, are two Icelandic nationals who were born in 1950 and 1948 respectively and live in Reykjavík.

The case concerns the imposition of fines on the applicants.

Mr Jónsson and Mr Hall are practising attorneys in Iceland. They were appointed as defence counsels for two defendants in a criminal case in March 2012. In April 2013 they requested that their appointment as defence counsels be revoked, but the District Court refused. Later, in a District Court judgment against their former clients, the applicants were fined, in their absence, 1,000,000 ISK (approx. 6,200 euros each) for contempt of court and for causing unnecessary delays in the proceedings. The applicants had not been summoned to the trial hearing and had not been informed of the intention of the court to fine them. The Supreme Court confirmed the imposition of fines.

Relying on Article 6 §§ 1, 2, and 3 (right to a fair trial / presumption of innocence) and Article 7 § 1 (no punishment without law) to the European Convention, the applicants complain in particular that the District Court had tried and sentenced them *in absentia*. Furthermore, they argued that they were held guilty of an offence which did not constitute a criminal offence under national law and that the amount of their fines had not been foreseeable according to the domestic law or jurisprudence. Relying on Article 2 of Protocol No. 7 (right of appeal in criminal matters), they also

maintain that their right to appeal had been violated as their defence had only been heard before one tribunal, the Supreme Court.

O.R. and L.R. v. the Republic of Moldova (no. 24129/11)

The applicants, Ms O.R. and Ms L.R., are two Moldovan nationals who were born in 1979 and 1987 respectively.

The case concerns the investigation into their allegation that they were forced to strip naked and do sit-ups by the police when arrested in the context of wide-scale unrest in Moldova in 2009.

The applicants were arrested on 7 April 2009 following protests by hundreds of young people in Moldova against the general elections. They allege that they were taken to Chişinău police headquarters and, along with others, were ordered to face the wall. Those who looked to the side were hit. They heard the sounds of people being beaten in an adjacent room. After signing their arrest record under threat, an officer escorted them to another room. Two officers ordered them to undress and do sit-ups. They were eventually released on 13 April 2009.

Soon after there were reports in the press about the incident, and there was an internal investigation during which the applicants were interviewed. Nine months later the prosecuting authorities launched a criminal investigation into three police officers. In 2013 two of the officers, who had ordered them to undress, were convicted of psychologically ill-treating the applicants and given a five-year suspended sentence. In the meantime, the prosecutor had discontinued the criminal investigation against the escorting officer, finding that his actions could not qualify as torture. Furthermore, the officer had clearly exceeded his powers but this was an administrative offence which was already time-barred.

The applicants' appeals against these decisions were all unsuccessful.

Throughout the proceedings none of the three officers were suspended from their duties.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), the applicants allege that the investigation into their ill-treatment was ineffective and that the police officers involved were able to act with impunity.

S.S. v. Slovenia (no. 40938/16)

The applicant, Ms S.S., is a Slovenian national who was born in 1979. She suffered from paranoid schizophrenia. The case concerns the withdrawal of her parental rights and the putting up for adoption of her fourth child.

All but one of her four children are either in foster care or adopted. The third child is living with his father in France.

She gave birth to her fourth child, E., in 2010 in Slovenia. Aware of her history, social workers visited her in hospital just after the birth. When staying with her mother in the following few weeks, she was provided with various social services. However, one month after the birth she left E. with the grandmother and went to France. Neither the grandmother nor the father was willing to look after the baby, and the authorities considered her to be abandoned. She was placed in foster care and eventually adopted in 2016.

The adoption was authorised following court proceedings, initiated by the welfare authorities, finding that it was in E.'s best interests to withdraw the applicant's parental rights. The case was examined at three levels of jurisdiction, with the applicant being fully involved and assisted by a lawyer. The courts based their decision in particular on a psychologist's report concluding that, despite treatment for her psychological problems, there was no realistic possibility of the applicant caring for her daughter. Her understanding of the child's needs was limited, and there was no emotional connection between mother and child.

While those proceedings were ongoing the welfare authorities organised monitored contact sessions. However, following the adoption, the courts ultimately dismissed the applicant's application for contact with E. in 2017, finding that contact would be traumatic for the child given the applicant's lack of empathy and negative attitude towards the adoptive parents. This decision was based on the opinion of a court-appointed expert and a social worker who had supervised contact sessions.

Relying on Article 8 (right to respect for private and family life), the applicant complains that the withdrawal of her parental rights was an extreme measure because it resulted in her ties with her daughter being completely severed. Also relying on Article 14 (prohibition of discrimination) in conjunction with Article 8, she complains that she was discriminated against on the grounds of her mental illness, arguing that she did not voluntarily neglect her child.

Kaboğlu and Oran v. Turkey (nos. 1759/08, 50766/10, and 50782/10)

The applicants, İbrahim Özden Kaboğlu and Baskın Oran, who were born in 1950 and 1945 respectively, are Turkish nationals residing in Istanbul and Ankara (Turkey). They are university lecturers.

The case concerns press articles criticising the applicants for the ideas they had presented in a report prepared by the Advisory Council on Human Rights in 2004 concerning questions of minority and cultural rights.

In 2003 Mr Kaboğlu and Mr Oran were respectively elected Chair of the Advisory Council and Chair of the Council's Working Group on questions concerning minority rights and cultural rights. The Advisory Council is a public body under the supervision of the Prime Minister, responsible for providing the government with opinions, recommendations, proposals and reports on any question connected with the promotion and protection of human rights.

In 2004 the Advisory Council's general meeting adopted a report on minority rights and cultural rights, referring to problems with the protection of minorities in Turkey. Following the release of the report, a number of articles condemning it and criticising the applicants were published in the press. Taking the view that those articles contained insults, threats and hate speech against them, the applicants filed four claims for damages against the authors and the proprietors of the daily newspapers in question. On various dates, their claims were dismissed by the District Court, whose judgments were upheld by the Court of Cassation.

Relying on Articles 2 (right to life), 8 (right to respect for private and family life), 10 (freedom of expression) and 14 (prohibition of discrimination), the applicants complain that the national authorities have not protected them from the insults, threats and hate speech directed against them in the press on account of the ideas they expressed in the report on minority rights and cultural rights.

Kurşun v. Turkey (no. 22677/10)

The applicant, Mazhar Kurşun, is a Turkish national who was born in 1963 and lives in Batman, Turkey.

The case concerns the Turkish courts' dismissal of Mr Kurşun's claims for compensation, following an explosion caused by an oil leak which damaged his property, on the grounds that his claims were out of time.

On 3 May 2004 a large underground explosion took place in the Toptancılar Sitesi area of Batman, in Turkey. Criminal proceedings against a number of officials from the Tüpraş Batman Oil Refinery were initiated soon after the explosion, but were eventually discontinued in 2012 as prosecution had become time-barred. During the proceedings it was considered that, although Tüpraş was the likely cause of the explosion, there was not sufficient evidence to confirm this. Following a number of civil

claims brought against Tüpraş by other property owners, the Batman Civil Court concluded in July 2006 that the refinery was solely responsible for the leak that had caused the initial explosion. This first public confirmation of the refinery's responsibility was subsequently upheld by the Court of Cassation on 30 January 2007.

On 16 November 2006, Mr Kurşun brought an action for compensation against Tüpraş in the Batman Civil Court. A court-commissioned expert report concluded that the applicant's property had sustained damage equivalent to that caused by a magnitude 9 earthquake. The court held that the applicant's claims had been brought within the one-year time-limit required by the Code of Obligations as it found that the time-limit should apply only from when the victim became aware of damage to property, on the one hand, and the party responsible for that damage, on the other. The party responsible for the damage had only been confirmed in the judgment of July 2006. Following an appeal by Tüpraş, the Court of Cassation overturned the initial ruling, holding that the time-limit had applied from the date of the explosion. Mr Kurşun's case was dismissed for a final time in October 2009.

Relying on Article 6 § 1 (right to a fair hearing), the applicant complains that he was denied a fair trial. Specifically, he argues that the dismissal of his compensation claim as out of time was based on an inaccurate interpretation of Turkish law and an erroneous assessment of the facts. It also lacked reasoning and contradicted decisions by the Court of Cassation in similar cases resulting from the same explosion. Relying on Article 1 of Protocol No. 1 (protection of property), the applicant also complains that the State authorities failed to meet their positive obligations with respect to his right to protection of property, both before and after the explosion.

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.

Nagy v. Hungary (no. 61940/13)
S.E.F.T. Trafik Kft and Others v. Hungary (no. 65845/13)
T.K. v. Hungary (no. 64321/13)
Z.T. v. Hungary (no. 69596/13)
Hănțescu v. Romania (no. 22181/15)
K.C. v. Romania (no. 45060/10)
Picu and Others v. Romania (nos. 74269/16, 74276/16, 74301/16, 76016/16, 76018/16, 23375/17, 23704/17, 24299/17, 32410/17, 33879/17, 33895/17, 33899/17, 33902/17, 33907/17, 33909/17, 33916/17, 33961/17, 33962/17, 33965/17, 33966/17, 33968/17, 33970/17, and 33971/17)
Bazanova and Mukhacheva v. Russia (nos. 23493/12 and 32397/12)
Khalaf and Others v. Russia (nos. 67967/13, 79049/13, 25038/14, and 8108/15)
Bakchizhov v. Ukraine (no. 24874/08)

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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.