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

Press Release
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Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing five judgments on Tuesday 30 April 2019 and five judgments and / or decisions on Thursday 2 May 2019.

*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 April 2019

Repcevirág Szövetkezet v. Hungary (application no. 70750/14)

The applicant company, Repcevirág Szövetkezet, is registered under Hungarian law as a cooperative based in Aranyosgadány.

The case concerns the applicant company's complaint about the domestic courts' refusal to seek a preliminary ruling from the Court of Justice of the European Union (CJEU) in a tax dispute.

In 2008 the tax office fined the company after it found it had unjustifiably deducted Value-Added Tax it had paid on agricultural machines, which it lent to cooperative members, from its tax bill. The applicant company unsuccessfully challenged the decision in court. The Supreme Court in November 2009 confirmed the first-instance court decision.

In 2010 the applicant company began proceedings against the Supreme Court. Relying on the CJEU's judgment in *Gerhard Köbler v Republik Österreich*, it asked the Budapest Regional Court to seek a preliminary ruling from the CJEU on whether the Supreme Court's decision had been in line with EU law and under what circumstances the Supreme Court could be held liable for a wrongful judgment.

In May 2011 the Budapest Regional Court rejected the claim against the Supreme Court and did not request a preliminary ruling from the CJEU. Appeals to the Budapest Court of Appeal and the *Kúria* were dismissed, with neither court referring a question to the CJEU. The Constitutional Court rejected a constitutional complaint in May 2014 as inadmissible.

Relying on Article 6 § 1 (access to court) of the European Convention on Human Rights, the applicant company complains about the courts' failure, particularly that of the *Kúria* and the Constitutional Court, to refer its case to the CJEU for a preliminary ruling.

Elvira Dmitriyeva v. Russia (nos. 60921/17 and 7202/18)

The applicant, Elvira Dmitriyeva, is a Russian national who was born in 1979 and lives in Kazan (Russia).

The case concerns the authorities' refusal to allow an opposition meeting following a call by Aleksey Navalnyy for a country-wide protest against corruption.

In March 2017 Ms Dmitriyeva sought to hold a meeting to demand the resignation of Prime Minister Dmitry Medvedev, suspected of large-scale corruption. However, Kazan Town Administration refused to approve the venues she had suggested because other public events were planned at the same venue.

A few days later, she posted a message on social networking site VKontakte criticising that refusal, which she had challenged before the courts, and announcing that the meeting would take place. The

courts allowed her claim in part, finding that the Town Administration's failure to propose an alternative venue was unlawful.

A few days later Ms Dmitriyeva held the meeting, but she was arrested on her way home and taken to a police station for four hours. In March and July 2017 she was found guilty of organising and calling for participation in an unauthorised public event and of refusing to obey a lawful police order to disperse. She was fined and given community work. The courts held in particular that the success of her complaint before the meeting had not amounted to "unconditional approval for the ... event".

Relying on Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 13 (right to an effective remedy) of the European Convention, Ms Dmitriyeva complains about the refusal to approve the venue for her meeting and her ensuing arrest and convictions for organising and calling for participation in an unauthorised public event, which she alleges were to punish her for holding an opposition meeting and to dissuade her from similar actions in the future.

She also complains, under Article 5 § 1 (right to liberty and security), that her arrest was unlawful and arbitrary and, under Article 6 § 1 (right to a fair trial), that the proceedings leading to her conviction for administrative offences were unfair as there was no prosecuting party and the trial and appellate courts had to assume the role of proving the accusations against her.

Kablis v. Russia (nos. 48310/16 and 59663/17)

The applicant, Grigoriy Kablis, is a Russian national who was born in 1976 and lives in Syktyvkar (Russia).

The case concerns his complaint about restrictions on his right to protest and on his access to the Internet.

In September 2015 Mr Kablis wanted to hold a picket-style protest to discuss the arrest of various Komi Republic officials, including the governor, on criminal charges. The Syktyvkar Town Administration refused to approve his chosen venue and suggested another location.

Mr Kablis wrote about these developments on his blog and posted information on social networking site VKontakte. Given the refusal for a picket at his chosen site, he urged people to join him in a "people's assembly" and discussion at the same place instead.

His VKontakte account was blocked on the orders of a deputy prosecutor, who found that he had called for people to take part in an unlawful public event as the picket had not been approved. Under a separate order, access to three entries on his blog relating to the planned event was restricted on the same grounds.

Mr Kablis went to court over the decisions on the picket and the Internet restrictions but his challenges were all dismissed.

Mr Kablis complains about the restrictions on the location of his picket under Article 10 (freedom of expression) and Article 11 (freedom of assembly and association), and alleges under Article 13 (right to an effective remedy) that he had no effective protection of his Article 11 rights. He also relies on Article 10 to complain about the restrictions on his VKontakte account and the blogs.

T.B. v. Switzerland (no. 1760/15)

The applicant, Mr T.B., is a Swiss national who was born in 1990. He was held in Lenzbourg prison (Switzerland), for the serving of sentences and implementation of court orders, and his application concerns his placement "for assistance purposes" from April 2014 to April 2015.

In November 2011 T.B. was sentenced to four years' imprisonment for premeditated murder, aggravated rape and aggravated sexual constraint, for killing a prostitute in a particularly heinous manner, after raping her twice. The court for minors supplemented the sentence with a protection measure, in the form of placement in a specialised closed centre with treatment for mental

disorders. In May 2012 the public prosecutor for minors sought his placement with medical treatment, when he reached 22, in a closed and secure centre.

On 20 June 2012 the district office ordered T.B.'s placement in accordance with the first paragraph of Article 397a of the Civil Code in security wing II of Lenzbourg prison. In September 2012 the Federal Court dismissed at last instance the applicant's civil-law appeal and on 22 November 2013 the Federal Court confirmed that new Article 426 of the Civil Code constituted a sufficient legal basis for his placement "for assistance purposes". T.B. again applied for his release.

In a judgment of 8 July 2014, the Federal Court pointed out that it had ruled in its judgment of principle that the conditions of former Article 397a of the Civil Code were met in the present case and took the view that T.B. represented a high risk for others. Moreover, the Federal Court decided that it could not go back on its judgment of 22 November 2013 in which it had ruled that new Article 426 of the Civil Code provided a sufficient legal basis for such placement. On 18 August 2015, and after spending three years in security wing II, the applicant was transferred to the prison's general unit for the serving of sentences. The placement was extended several times and, on 11 June 2018, the Family Court, in extending the placement until the end of September 2018, decided that after that date T.B. would be placed in external accommodation, which was the case on 28 September 2018.

Relying on Article 5 § 1 (e) (right to liberty and security), the applicant alleges that his placement "for assistance purposes" from April 2014 to April 2015 had no legal basis. He also complains that he has not been held in a suitable institution.

Aksis and Others v. Turkey (no. 4529/06)

The applicants are 13 Turkish nationals who were born between 1926 and 1986 and live in Istanbul, Bursa, Ankara, and Yalova (all in Turkey). Four of the applicants have died since lodging the application.

The case concerns the dismissal of the applicants' compensation claims for damages following the collapse of apartments they owned in Yalova in an earthquake in August 1999.

They brought claims for compensation against the contractors who had built their apartments, arguing that they should be held liable for their losses because they had not respected construction laws and regulations.

Their claims were ultimately dismissed in 2004 and 2005 by the 13th Civil Chamber of the Court of Cassation as being out of time. The court, characterising the applicants' actions as contractual claims, found that they had not complied with the 10-year time-limit for bringing an action, which had started running from the date on which the construction works had ended.

In the meantime, the First Presidency of the Court of Cassation dismissed a request from the applicants to harmonise the case-law on the application of time-limits in claims for damages arising from the 1999 earthquake. The applicants had drawn attention in particular to other claims which had been classified by the 4th Civil Chamber as actions in tort, meaning that the date of the earthquake had been used for calculating the time-limit.

Relying on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), the applicants complain about the dismissal of their claims, alleging in particular inconsistencies in the application of time-limits by different chambers of the Court of Cassation.

Thursday 2 May 2019

Vesselinov v. Bulgaria (no. 3157/16)

The applicant, Zachari Vesselinov, is an Austrian national who was born in 1934 and lives in Vienna.

The case concerns Mr Vesselinov's complaint that he was found liable for defamation when he sent a letter to the local authorities accusing his nephew of using forged notarial deeds to carry out construction work on family property.

Following a visit to Sofia in 2009 Mr Vesselinov sent a letter to the local authorities expressing his indignation that his nephew had significantly altered the house which had been owned by his parents and doubts as to the legality of the construction work. He stated in particular that his nephew was in possession of an "illegal notarial deed ... acquired on the basis of a forged notarial deed".

The nephew brought a private criminal prosecution for defamation against Mr Vesselinov coupled with a claim for damages. The criminal prosecution was subsequently discontinued as time-barred. However, Mr Vesselinov was found liable in tort for damaging his nephew's reputation. The courts found in particular that his statements about illegal or forged notarial deeds were not true, and that his nephew was the true owner of part of the property in question. He was ordered to pay the equivalent of 2,557 euros for non-pecuniary damage.

Relying on Article 10 (freedom of expression), Mr Vesselinov complains about the national courts' judgments finding him liable for defamation.

Vetsev v. Bulgaria (no. 54558/15)

The applicant, Valter Vetsev, is a Bulgarian national who was born in 1973 and lives in Sofia.

The case concerns the authorities' refusal to authorise Mr Vetsev, who was remanded in custody, to attend his brother's funeral in Sofia.

Mr Vetsev relies on Article 8 (right to respect for private and family life).

Adžić v. Croatia (no. 2) (no. 19601/16)

The applicant, Miomir Adžić, is an American national who was born in 1968 and lives in Charlotte (North Carolina, the United States of America).

The case concerns his complaint about proceedings for the return of his son to the USA after his wife failed to come back from a holiday in Croatia, her country of origin, and told him she was filing for divorce.

Mr Adžić has already brought a case (Adžić v. Croatia no. 22643/14) before the European Court concerning the proceedings for the return of his son under the Hague Convention on the Civil Aspects of International Child Abduction. The Court held in 2015 that there had been a violation of Article 8 (right to respect for private and family life) because of the excessive length of the proceedings, which had at that time already lasted over three years and were still pending before the Constitutional Court.

The Constitutional Court has since given its judgment in the case, dismissing the applicant's complaints that the courts had not held a single hearing in his case and that he had not been informed about or involved in the assessment carried out at first instance by a psychiatrist who had suggested that transferring his son to a different environment without his mother would be traumatic for him.

In the present case before the Court Mr Adžić complains under Article 8 (right to respect for private and family life) about the outcome of the Hague Convention proceedings, and in particular the courts' refusal to order his son's return. Also relying on Article 6 § 1 (right to a fair hearing), he alleges that the proceedings in his case were not fair because of procedural errors related to the psychiatrist's report and the lack of an oral hearing.

Pasquini v. San Marino (no. 50956/16)

The applicant, Enrico Maria Pasquini, is an Italian national who was born in 1948 and lives in San Marino.

The case concerns the applicant's complaint about various sets of court proceedings over a large debt his company was deemed to owe to a third party.

Mr Pasquini was the owner and director of a fiduciary company called S.M.I. In 1990 he made some investments under a mandate on behalf of an individual, B.

B. complained that he had not been paid all the funds due to him after the investments and in 2001 he filed a civil complaint against S.M.I. During the proceedings B. was asked to swear an oath, known as a supplementary oath, to back up his evidence concerning the debt. The applicant appealed unsuccessfully against the oath procedure and in June 2011 the appeal judge confirmed that S.M.I. owed approximately 9.04 billion Italian liras to B.

The applicant began criminal proceedings against B., alleging that he had committed perjury in taking the oath. In May 2015, the investigating judge ended the proceedings for lack of evidence. In July that year another judge, Judge L.F., dismissed an appeal by the applicant against that decision.

In October 2014 the applicant applied to reopen the initial 2001 civil proceedings, including a "jactitation suit" (*azione di iattanza/di accertamento negativo*) within his claim, asking the judge to declare that B. had sworn a false oath. The case was referred to the Court for Trusts and Fiduciary Relationships, which found that only the first half of the oath had been false and upheld the debt award. The court also set court fees at 29,500 euros (EUR) and lawyers' costs at EUR 37,887.

The applicant was refused leave to appeal by the President of the Court for Trusts, who had also adjudicated at first-instance, a decision upheld by Judge L.F. in his capacity as a civil appeals judge.

Mr Pasquini brings various complaints under Article 6 § 1 (right to a fair hearing / access to court). In particular, he complains that the supplementary oath breached his right to a fair trial; that the first-instance Court for Trusts panel was not formed in accordance with the law; and that the President of the Court for Trusts who refused him leave to appeal and the Judge of Civil Appeals who confirmed that decision were not impartial.

He also alleges a violation of his right of access to a court owing to the refusal of leave to appeal and to the court fees. In addition, he complains under Article 1 of Protocol No. 1 (protection of property).

Famulyak v. Ukraine (no. 30180/11)

The applicant, Pavel Famulyak, is a Ukrainian national who was born in 1980 and lives in Lviv (Ukraine).

The case concerns his allegation that proceedings against him for aggravated robbery were unfair.

Mr Famulyak was arrested in July 2007 on suspicion of attacking and robbing a man. He gave a statement to the police, explaining that he had spent time with the victim on the night of the attack, but denied any wrongdoing. He was not assisted by a lawyer during his interview, but was warned of his constitutional right not to give incriminating statements.

He maintained his statement throughout the subsequent proceedings on charges of aggravated robbery, including at trial.

Mr Famulyak was convicted as charged in December 2007 and sentenced to nine years' imprisonment. The trial court relied on testimony given in court by the victim, his wife and the police officers in charge of the investigation, the fact that the victim's mobile phone had been found on the applicant and medical reports on the victim's injuries.

The Court of Appeal then quashed this judgment and remitted the case for retrial. It requested in particular that additional aspects of the attack, namely that the applicant had thrown a brick at the victim and hit him with a bottle, be reflected in the trial court's judgment.

Mr Famulyak was convicted again in June 2009. The new trial judge had examined the victim and transcripts of all witness evidence recorded in the first trial.

In December 2009 and April 2011, both the Court of Appeal and the Supreme Court dismissed Mr Famulyak's appeals alleging procedural irregularities, namely that he was not provided with a lawyer when originally detained and that, during the retrial, he was unable to cross-examine the victim or the three police officers.

Relying on Article 6 §§ 1 and 3 (c)) (right to a fair trial / right to legal assistance of own choosing), Mr Famulyak complains that he and his co-defendant were questioned during the initial days of their detention without a lawyer and that their statements were used against them. He further argues under Article 6 §§ 1 and 3 (d) (right to a fair trial / right to obtain attendance and examination of witnesses) that his case was remitted for retrial but to a different trial judge and therefore he should have been allowed to re-examine the prosecution witnesses.

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