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

Press Release issued by the Registrar of the Court

ECHR 146 (2020)
28.05.2020

Judgments and decisions of 28 May 2020

The European Court of Human Rights has today notified in writing 15 judgments[1] and 41 decisions[2]:

four Chamber judgments are summarised below; a separate press release has been issued for one other Chamber judgment in the case of *Farzaliyev v. Azerbaijan* (no. 29620/07);

a separate press release has also been issued for one decision, in the case of *Graner v. France* (no. 84536/17);

ten Committee judgments, concerning issues which have already been submitted to the Court, and the other 40 decisions, can be consulted on *Hudoc* and do not appear in this press release.

The judgments below are available only in English.

Antonov v. Bulgaria (application no. 58364/10)

The applicant, Yordan Antonov, is a Bulgarian national who was born in 1940 and lives in the village of Okorsh, Silistra region (Bulgaria).

The case concerned his complaint that the authorities had failed to comply with final court judgments ordering a tax refund in his favour.

In 2000-01 the applicant was audited by the tax authorities. They issued a tax assessment charging him 55,013.43 Bulgarian levs ((BGN); 28,128 euros (EUR)) in Value Added Tax and income tax, including interest.

However, in 2004, after judicial review proceedings, the Varna Regional Court instructed the tax authorities to carry out a fresh audit. The court found that the 2001 tax assessment had been in breach of the statutory provisions because the applicant had been audited as an individual, whereas the taxes charged related to the activity of a private agricultural association for which he was the legal representative.

Following a new audit in 2004 covering the same period as that in the 2001 assessment, the tax authorities issued another assessment, charging the applicant BGN 40,729.81 (EUR 20,825). The applicant brought further judicial review proceedings and in 2007 the Supreme Administrative Court ("the SAC") set aside the 2004 assessment, finding that the taxes levied had not been due. In final judgments of November 2008 and December 2008 the SAC reiterated this finding and ordered the authorities to refund the applicant, with interest.

The applicant's requests for a refund were then stayed pending the outcome of proceedings brought by the tax authorities seeking a declaration of nullity and a reopening of the proceedings.

The authorities' actions were ultimately unsuccessful and three and a half years later, the applicant was refunded the unduly collected taxes.

[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

[2] Inadmissibility and strike-out decisions are final.

In the meantime, between 2003 and 2008, the authorities had auctioned a number of the applicant's personal belongings to enforce the 2001 and 2004 tax assessments.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, the applicant complained about the tax authorities' prolonged failure to pay him back unduly collected taxes, despite two final judgments in his favour, alleging that they had used procedural manoeuvres to delay payment.

Violation of Article 1 of Protocol No. 1

Just satisfaction: 3,500 euros (EUR) for non-pecuniary damage and EUR 1,930 for costs and expenses

Z v. Bulgaria (no. 39257/17)

The applicant, Ms Z, is a British national who was born in 2001 and lives in a small village in the Yambol region (Bulgaria).

The case concerned the applicant's complaint of an ineffective official response to her allegation that she had been raped.

On 26 February 2015 the applicant, 13 years old at the time, reported to the police that she had been raped the previous night when staying at a friend's house. A criminal investigation was immediately opened by the local district prosecution service and the applicant and alleged offender, G.S., her friend's boyfriend, were interviewed.

The applicant stated that she had been sleeping when G.S. had got into bed with her. She had at first turned to face the wall and pretended to be asleep, but G.S. had started groping her so she pushed him away and clutched her legs together. However, he continued the assault and then raped her. G.S. denied the rape throughout the ensuing investigation, which also included further witness questioning (including the applicant's friend and friend's parents), an inspection of the crime scene, and a psychological examination of the applicant. The psychological report concluded among other things that the applicant had experienced intense fear and shame, which had temporarily blocked her reactions.

In August 2015 the district prosecutor concluded that the applicant had been raped and sent the file to the regional prosecution service to proceed with the investigation.

However, the regional prosecutor assigned to the case refused to follow the recommendation to prosecute for rape, finding that the evidence collected during the investigation, in particular the victim's statement, did not meet the legal requirement for that crime. The applicant's lawyer and mother continued to attempt to have G.S. prosecuted on charges of rape and requested a number of further investigative measures, in particular that the applicant be examined again following her frequent self-harming after the incident, without success.

G.S. was thus indicted for the crime of sexual intercourse with a person under the age of 14. The courts found him guilty as charged in May 2016 and sentenced him to one year and four months' imprisonment, suspended for three years.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life), the applicant complained that the authorities had failed to effectively investigate her allegation of rape and, by prosecuting for a lesser offence, also had inadequately punished the offender.

Violation of Article 3 (investigation)
Violation of Article 8

Just satisfaction: EUR 12,700 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

Evers v. Germany (no. 17895/14)

The applicant, Jörg Evers, is a German national who was born in 1939 and lives in Baden-Baden (Germany).

The case concerned his complaint about a ban on him having any contact with V., the mentally disabled daughter of his former partner.

The ban was made in 2013 in order to protect V. from sexual abuse by the applicant.

When living with his former partner, P.B., in 2009 the applicant had had a sexual relationship with V., who was 22 years old at the time. V. had become pregnant and gave birth to his son in 2011.

Two sets of criminal proceedings were brought against the applicant, which included P.B. in the second set of proceedings, for sexual abuse. They were ultimately discontinued, with the applicant and P.B. having to pay fines. In the second set of proceedings the domestic court pointed out in particular that V. was incapable of resisting the applicant's sexual advances and that he had taken advantage of the special relationship of confidence he had with V. and her mother.

Meanwhile, both V. as well the applicant's and V.'s child were placed in care and V. was appointed a professional guardian. In the guardianship proceedings, basing their decisions on the conclusions of three experts, the courts found that V. had a moderate mental disability, with the intellectual development of a four-year old, and was unfit to manage any of her affairs by herself.

When V. showed signs of mental distress and needed medication after the applicant and P.B. had visited her residential home in September 2012, V.'s guardian sought approval from the courts of a contact ban.

The courts upheld the ban and dismissed the applicant's appeal in March 2013. Basing their decisions on the conclusions of the three experts appointed in the guardianship proceedings and V.'s guardian, they found that the ban was not only lawful but imperative in order to protect V. from the applicant who maintained his wish to continue a sexual relationship with her, entailing the further risk of pregnancies and danger to her. Furthermore, they had heard V. on several occasions and she had expressed no particular interest in having contact with him.

In the appeal proceedings, the applicant's request for a personal hearing was rejected on the ground that he had been able to present his case sufficiently in writing.

Subsequently, his complaint of a violation of his right to be heard was dismissed, and the Federal Constitutional Court declined to consider his constitutional complaint.

Relying on Article 8 (right to respect for his private and family life), the applicant complained about the ban on his having contact with V. Also relying on Article 6 (right to a fair trial), he alleged that the contact ban had not been based on enough evidence, that he had been refused full access to the case file on the guardianship proceedings and that he had not been heard in person, in particular before the appeal court.

No violation of Article 6 - as regards the evidential basis for the domestic courts' decisions
No violation of Article 6 - as regards the applicant's access to the guardianship case-file
Violation of Article 6 - as regards the absence of an oral hearing of the applicant

Just satisfaction: the Court held that the finding of a violation of Article 6 of the Convention constituted sufficient just satisfaction for the non-pecuniary damage sustained by Mr Evers; it further awarded Mr Evers EUR 3,000 for costs and expenses.

Georgouleas and Nestoras v. Greece (nos. 44612/13 and 45831/13)

The applicants, Ilias Georgouleas and Spyridon Nestoras, are Greek nationals who were born in 1965 and 1974 respectively and live in Athens and Piraeus (Greece).

The case concerned their complaint about having been found guilty of financial market manipulation.

In October 2007 the Hellenic Capital Market Commission stock market regulator found the applicants guilty of violating the first sentence of Article 72 § 2 of Law no. 1969/1991, which penalised the publication or dissemination of inaccurate or misleading information affecting the price of or dealing in listed securities. It had found that the applicants had been involved in transactions to artificially manipulate the price of shares in the D.K. company in 2003 and 2004.

The applicants appealed successfully to the Athens Administrative Court of Appeal, which held that the transactions did not fall within the scope of the first sentence of Article 72 § 2 as they could not be regarded as the publication or diffusion of inexact or misleading information, even if they had aimed at manipulating the price of shares and had resulted in artificially influencing them.

In April 2009 the Capital Market Commission lodged appeals on points of law, which were upheld in January 2013 by the Supreme Administrative Court.

In particular, the Supreme Administrative Court held that Article 72, which aimed at the market's smooth running and the protection of investors, did not specify particular forms of disseminating inexact or misleading information that could lead to artificially influencing share prices.

If the transactions had therefore been entered into with the intention of providing false information concerning the price and marketability of securities so as not to reflect their true value, and had resulted in misleading investors as regards elements that could influence their decision-making, then the performance of those transactions would be in breach of the provision.

The transactions had constituted dissemination of inexact or misleading information, given that the artificially formulated data concerning the price and marketability of the shares had been published, by law, in the daily stock exchange official list and in the electronic record of transactions. That conclusion was reinforced by the second sentence of Article 72 § 2, which provided that professional facilitators, that is to say those who on a daily basis entered into many transactions on behalf of others, would not be sanctioned unless they knew or ought to have known that by entering into those transactions, they had been attempting to disseminate inexact or misleading information.

The applicants' case was remitted to the appeal court, which upheld the fines, although it reduced that of the second applicant.

Relying on Article 7 (no punishment without law), the applicants complained that the sanctions imposed on them by the Commission, as upheld by the administrative courts, had violated their right not to be held guilty for an act which had not constituted a criminal offence prescribed by law.

No violation of Article 7

Press contacts
Journalists can contact the Press Unit via echrpress@echr.coe.int

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.