



Judgments of 8 November 2020

The European Court of Human Rights has today notified in writing 13 judgments¹:

seven Chamber judgments are summarised below;

separate press releases have been issued for five other Chamber judgments in the cases of *Hovhannisyan and Nazaryan v. Armenia* (applications nos. 2169/12 and 29887/14), *Aygün v. Belgium* (no. 28336/12), *Saure v. Germany* (no. 8819/16), *Moraru v. Romania* (no. 64480/19), and *Văleanu and Others v. Romania* (no. 59012/17 and 29 other applications);

one Committee judgment, concerning issues which have already been submitted to the Court, can be consulted on Hudoc and do not appear in this press release.

The judgment in French below is indicated with an asterisk ().*

Vardanyan and Khalafyan v. Armenia (application no. 2265/12)

The applicants, Anahit Vardanyan, Vardan Khalafyan, Hmayak Khalafyan and Ani Khalafyan, are Armenian nationals who were born in 1962, 1986, 1975 and 1992 respectively and live in Charentsavan (Armenia).

The case concerns the death of their relative, Vahan Khalafyan, in police custody at the age of 24.

Relying on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 § 1 (right to liberty and security) and 13 (right to an effective remedy) of the European Convention on Human Rights, the applicants complain of the circumstances of his arrest and his death and the failure of the authorities to carry out an effective investigation.

Violation of Article 2 (right to life and investigation)

Violation of Article 3 (ill-treatment and investigation)

Just satisfaction:

non-pecuniary damage: 50,000 euros (EUR)

Gaggl v. Austria (no. 63950/19)

The applicant, Hildegard Gaggl, is an Austria national who was born in 1940.

The case concerns her criminal trial and conviction for the attempted murder of her husband, Alois Gaggl. In January 2018 the 77-year-old applicant repeatedly stabbed and attempted to kill her 84-year-old spouse to whom she had been married for over 52 years. She later testified that she had intended to kill him and then to commit suicide because of their advanced age and state of health, and his not agreeing for them to move into a nursing home. Her husband testified during the trial hearing in his wife's favour, stating that he was not upset with her for what she had done.

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

Relying on Article 6 § 1 (right to a fair trial) and Article 5 § 1 (right to liberty and security) of the European Convention, the applicant complains that her criminal conviction was unfair and the detention resulting from it unlawful. In particular, she complains of not having been provided with the opportunity to understand the reasons on which the jury based her conviction given that the conclusions of the two expert opinions on her mental state at the time of the offence were diametrically opposed and that the domestic courts dismissed her application, which had the support of the public prosecutor, to obtain a third and decisive expert opinion.

Violation of Article 6 § 1

Just satisfaction: the applicant did not submit any claims for just satisfaction

Nikolay Kostadinov v. Bulgaria (no. 21743/15)

The applicant, Nikolay Kostadinov, is a Bulgarian national who was born in 1971 and lives in Versailles (France).

The case concerns the applicant's complaint about the authorities' response to a fraudulent takeover of his company, Vandom OOD, based in Sofia. He had set the company up in 2004 with his sister. They discovered in 2008, during a legal dispute over a plot of land bought by the company, that they were no longer considered shareholders in Vandom. A certain D.A., unknown to them, had had the entry in the register of companies with regard to Vandom changed using forged documents showing that the applicant and his sister had authorised him to sell their shares. D.A. was subsequently found guilty of aggravated fraud and given an 11-month suspended prison sentence. The authorities did not try to identify potential accomplices. All the applicant's subsequent efforts to defend his rights and to regain control of his company were ultimately unsuccessful, in particular because the people who took over the company after D.A.'s fraudulent actions were able to transfer the shares while the proceedings brought by the applicant against them were pending.

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, Mr Kostadinov complains that domestic law, as applied in his case, did not adequately protect his property rights.

Violation of Article 1 of Protocol No. 1

Just satisfaction: the question concerning pecuniary and non-pecuniary damage is not ready for decision and has been set aside
costs and expenses: EUR 2,784

Ayuso Torres v. Spain (no. 74729/17)

The applicant, Miguel Ayuso Torres, is a Spanish national who was born in 1961 and lives in Madrid.

When the events in issue took place, the applicant was a member of the Military Legal Corps, with the rank of Lieutenant Colonel Auditor. The case concerns disciplinary proceedings against him for comments made in a speech on the transition process from military dictatorship to democracy in Spain, describing the Spanish Constitution as a "pseudo-constitution" and that the origins of the Constitution were "spurious and bastardised".

Relying on Article 10 (freedom of expression) and Article 6 § 1 (right to a fair trial), Mr Torres complains that the disciplinary decision stated that he had surpassed his freedom of expression and would be sanctioned if he were to make such a statement again, and of the rejection of his appeal denying him judicial protection.

Violation of Article 10

Just satisfaction:
non-pecuniary damage: EUR 4,000

costs and expenses: EUR 4,000

Marina Aucanada Group S.L. v. Spain (no. 7567/19)

The applicant, Marina Aucanada Group S.L., is a limited liability company based in Madrid.

The case concerns the court proceedings around a public call for tenders announced by the Port Authority of the Balearic Islands in 2015, for the management of moorings, including concessions, on the dock of the Old Port of Alcúdia (Mallorca). While the call for tenders was still open, the Alcúdia City Council brought judicial proceedings against the Port Authority, alleging that the call infringed an agreement between the City Council and the Port Authority. The High Court of the Balearic Islands ordered that any “interested party” should be invited to participate in the proceedings. The Port Authority published a public notice in the Official Gazette of the Balearic Islands conveying this information. The tenderers were not directly served with a summons to appear in the proceedings. The applicant subsequently submitted a tender, which was selected as the most advantageous. The courts later found for the City Council and declared the call for tenders null and void.

Relying on Article 6 (right to a fair trial), the applicant complains that, in not notifying it of the proceedings, Spain violated the applicant’s right of access to a court.

No violation of Article 6 § 1

Veres v. Spain (no. 57906/18)

The applicant, Mr Márton Veres, is a Hungarian national who was born in 1967 and lives in Pomáz (Hungary).

The case concerns a legal dispute between the applicant and his ex-wife over custody of their daughter, who is currently 16 years old. The applicant’s ex-wife moved to Spain with their daughter, who was eight years old at the time, without informing the applicant. The applicant applied to a Hungarian court for an order that the daughter be brought back to Hungary pending a final decision in the custody proceedings. The order was granted by the Hungarian court. The applicant went through lengthy proceedings in Spain so that the order could be recognised and enforced. Recognition and enforcement orders were ultimately granted by the Spanish courts, and the daughter was brought back to Hungary.

Relying on Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life), the applicant complains that the proceedings in Spain were unreasonably long, which prevented him from seeing his daughter and affected their relationship. In addition, relying on Article 13 (right to an effective remedy), the applicant complains that he did not have access to an effective remedy to expedite the proceedings and redress the alleged violation of his rights.

Violation of Article 8

Just satisfaction:

non-pecuniary damage: EUR 24,000

Yüksekdağ Şenoğlu and Others v. Türkiye (no. 14332/17 and 12 other applications)

The applicants are 13 Turkish nationals. Following the parliamentary elections of 1 November 2015 they were elected to the Turkish Grand National Assembly as representatives of the Peoples’ Democratic Party (HDP), a left-wing pro-Kurdish political party. At the time of the events the first applicant, Figen Yüksekdağ Şenoğlu, was one of the co-chairs of the HDP.

The case concerns the applicants' pre-trial detention during their time as members of parliament, purportedly on account of political speeches given by them. Twelve of the applicants were placed in pre-trial detention in 2016 and one of them in 2017.

The full list of applicants is as follows: Figen Yüksekdağ Şenoğlu, born in 1971; İdris Baluken, born in 1976; Besime Konca, born in 1970; Abdullah Zeydan, born in 1972; Nihat Akdoğan, born in 1980; Selma Irmak, born in 1972; Ferhat Encu, born in 1985; Gülser Yildirim, born in 1963; Nursel Aydoğan, born in 1958; Çağlar Demirel, born in 1969; Ayhan Bilgen, born in 1971; Burcu Çelik, born in 1986; and Leyla Birlik, born in 1974.

Relying on Article 10, the applicants allege a violation of their right to freedom of expression.

Under Article 5 §§ 1 and 3 (right to liberty and security), the applicants complain about their pre-trial detention, which in their view was arbitrary. In that connection they allege that their placement in pre-trial detention was incompatible with the domestic legislation in that they were members of the National Assembly and as such entitled to parliamentary immunity. They also contend that there was no evidence giving rise to a reasonable suspicion that they had committed a criminal offence justifying their detention. All the applicants further complain of the length of their pre-trial detention and allege that the judicial decisions concerning their detention contained no reasons other than a mere statement of the grounds for pre-trial detention provided for by law, and were worded in abstract, repetitive and formulaic terms.

Relying on Article 5 § 4 (right to a speedy decision on the lawfulness of detention), eleven of the applicants complain of being denied access to the investigation file. In their view, they were prevented from challenging effectively the decisions ordering their placement in pre-trial detention.

Also from the standpoint of Article 5 § 4 (right to a speedy decision on the lawfulness of detention), twelve of the applicants maintain that the Constitutional Court proceedings in which they sought to challenge the lawfulness of their pre-trial detention did not comply with the requirements of the Convention, in that the Constitutional Court failed to observe the requirement of "speediness".

The applicants also complain about their pre-trial detention from the standpoint of Article 3 of Protocol No. 1 to the Convention (right to free elections).

Under Article 18 (limitation on use of restrictions on rights) of the Convention, read together with Article 5, the applicants complain that they were detained for expressing critical opinions about the political authorities. They argue in that regard that the purpose of their pre-trial detention was to silence them.

Relying on Article 34 (right of individual application) of the Convention, eleven of the applicants contend that the criminal investigations concerning some of their lawyers had an intimidating effect on them.

Violation of Article 10

Violation of Article 5 § 1

Violation of Article 5 § 3

Violation of Article 5 § 4 (lack of access to the investigation file)

Non-violation of Article 5 § 4 (lack of speedy judicial review by the Constitutional Court)

Violation of Article 3 du Protocole n° 1

Violation of Article 18 combiné avec l'article 5

No violation of Article 34

Article 46: the Court held that the respondent State was to take all necessary measures to put an end to the pre-trial detention of those applicants still deprived of their liberty

Just satisfaction: details of the amounts awarded to the applicants in respect of non-pecuniary damage and costs and expenses are set out in a summary table appended to the judgment.

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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.