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

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ECHR 171 (2020)
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Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 26 judgments on Tuesday 23 June 2020 and 24 judgments and / or decisions on Thursday 25 June 2020.

*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 23 June 2020

Kasmi v. Albania (no. 1175/06)

The applicant, Gezim Kasmi, is an Albanian national who was born in 1942 and lives in Tirana.

The case concerns the applicant's legal efforts to evict tenants from a former nationalised property which had been restored to his family.

In 1997 the applicant and his siblings inherited two houses which had been nationalised during the communist period but which had been restored to their father. One of the houses was occupied by tenants and the applicant lodged a civil action with Tirana District Court to evict them. The District Court upheld his action in March 2003, however, on appeal by the tenants, the judgment was quashed in respect of three of the four tenants.

The Court of Appeal held that the tenants had been occupying the house since the 1980s. It found that one of them was legally homeless and had had a right to a tenancy since 1993. Two others had been living abroad as economic migrants for two years but had not established any permanent residence there and had not abandoned their dwelling in Albania.

The Supreme Court upheld the Court of Appeal's decision in July 2005, finding that the three tenants were legally homeless and had a right to occupy the house. The applicant informed the Court in May 2010 that he had taken possession of the house after the tenants living there had died.

The applicant complains of a breach of Article 1 of Protocol No. 1 (protection of property) to the Convention as he was unable to recover possession of his house and receive income from it.

Vladimir Kharitonov v. Russia (no. 10795/14), OOO Flavus and Others v. Russia (nos. 12468/15, 23489/15 and 19074/16), Engels v. Russia (no. 61919/16), and Bulgakov v. Russia (no. 20159/15)

The cases concern the authorities' decisions to block access to the applicants' websites.

Vladimir Kharitonov v. Russia

In late 2012 the applicant discovered that the IP address of his website, Electronic Publishing News (http://www.digital-books.ru), had been blocked by the Roskomnadzor telecoms regulator. The measure had been taken after a decision by the Federal Drug Control Service, which wanted to block access to another website, rastaman.tales.ru – a collection of cannabis-themed folk stories – which had the same hosting company and IP address as the applicant's.

The applicant lodged a court complaint, arguing that blocking the IP address had also blocked access to his website, which did not have any illegal information. The courts upheld Roskomnadzor's action as lawful without assessing its impact on the applicant's website.

OOO Flavus and Others v. Russia

The applicants own opposition media outlets: the first applicant, OOO Flavus, owns grani.ru; the second applicant, Garry Kasparov, is the founder of www.kasparov.ru, an independent web publication; and the third, OOO Mediafokus, owns the Daily Newspaper ("Ezhednevnyy Zhurnal") at ej.ru, which publishes research and analysis critical of the Russian Government.

In March 2014 Roskomnadzor blocked access to the applicants' websites on request from the Prosecutor General, acting under section 15.3 of the Information Act, over content which allegedly promoted acts of mass disorder or extremist speech. No court order was required.

The applicants unsuccessfully applied for a judicial review of the blocking measure, complaining about the wholesale blocking of access to their websites, a lack of notice of the specific offending material, which they could therefore not remove in order to restore access.

Bulgakov v. Russia

In November 2013 the applicant found out that the local Internet service provider had blocked access to his website, "Worldview of the Russian Civilization" (www.razumei.ru), on the basis of a court judgment of April 2012, which he had not been aware of. That judgment, given under section 10 (6) of the Information Act, targeted an electronic book which was present in the files section of the applicant's website and which had been previously categorised as an extremist publication. The court also ordered that the blocking order be implemented by way of blocking access to the IP address of the applicant's website at the provider level.

The applicant deleted the e-book as soon as he found out about the court's judgment. However, the courts refused to lift the blocking measure on the grounds that the court had initially ordered a block on access to the entire website by its IP address, not just to the offending material.

Engels v. Russia

In April 2015 a court ordered Roskomnadzor to block access to the applicant's website on freedom of expression and privacy issues, RosKomSvoboda (rublacklist.net), on the basis of a complaint by a prosecutor. The prosecutor argued that information about bypassing content filters – which was available on the applicant's website – should be prohibited from dissemination in Russia as it enabled users to access extremist material on another, unrelated website. The applicant was not informed about the proceedings.

After the court order Roskomnadzor asked the applicant to take down the offending content, otherwise the website would be blocked. He complied with the request. The Russian courts rejected an appeal by the applicant without dealing with his main argument that providing information about tools and software for the protection of the privacy of browsing was not against any Russian law.

All the applicants in these cases complain under Article 10 (freedom of expression) that the blocking of access to their websites had been unlawful and disproportionate, and under Article 13 (effective remedy) that the Russian courts had failed to consider the substance of their complaints.

Omorefe v. Spain (no. 69339/16)

The applicant, Pat Omorefe, is a Nigerian national who was born in 1976 and lives in Pamplona (Spain). At the relevant time Ms Omorefe was living illegally in Spain.

The case concerns the placement in foster care and subsequent adoption of Ms Omorefe's son, a child born in 2008.

In February 2009 Ms Omorefe requested that her son be placed under wardship in a reception centre run by the regional government of Navarre. The following day the child was declared abandoned and placed in a reception centre. The following month Ms Omorefe was informed that the measure envisaged was foster care and that her son could be reintegrated into his biological family in the medium term provided that his parents achieved certain objectives.

In March 2009 the appraisal board proposed the implementation of pre-adoption reception in foster care, finding that the mother had not attended all visits, that she was detached from her child during her visits and that her personal situation was very unstable. It was also stated that Ms Omorefe would not object to foster care but insisted that it should not deprive her of contact with her son.

In May 2009 the Directorate-General for Family and Children ("the Authority") suspended the visits because of Ms Omorefe's failure to be present at all scheduled visits and her difficulties in establishing an emotional bond with the child. It then asked the court to temporarily place the child in pre-adoption foster care and to relieve Ms Omorefe of her parental authority. The minor was thus placed in foster care by decision of the court.

In July 2009 Ms Omorefe appealed against this decision. Her application was rejected. Subsequently, she appealed to the *Audiencia Provincial* court of Navarra, which admitted her appeal, finding that the child's adoption could not take place without the mother's consent. The Authority lodged an appeal on points of law, which was declared inadmissible. The pre-adoption reception measure was cancelled in February 2014.

In March 2014 Ms Omorefe asked to be allowed to visit her son. Having received no reply from the authorities, she lodged an appeal complaining of the non-recognition of her access rights.

In June 2015 the first-instance court granted her access for one hour per month, for supervised visits at a family meeting facility run by the authorities.

In the meantime the Authority had taken further steps to arrange for the pre-adoption reception of the minor by his foster family, followed by his adoption, submitting a report in which it noted the child's links with the foster family, with whom he had been living for five years, and also his satisfactory development and favourable evolution.

In October 2015 the *Audiencia Provincial* authorised the adoption of Ms Omorefe's son, finding that the lack of consent of the biological mother was not an obstacle if the adoption was in the minor's interest. Ms Omorefe's *amparo* appeal to the Constitutional Court was declared inadmissible.

Relying on Article 8 (right to respect for private and family life), Ms Omorefe complains that the authorities failed to take any steps to preserve her relationship with her son, as his biological mother, when deciding on the child's placement and during the domestic proceedings.

Thursday 25 June 2020

Bagirov v. Azerbaijan (nos. 81024/12 and 28198/15)

The applicant, Khalid Zakir oglu Bagirov, is an Azerbaijani national who was born in 1976 and lives in Baku. He was a lawyer and member of the Azerbaijani Bar Association ("the ABA").

The case concerns his complaint that he was suspended from practising law for one year, then disbarred because of statements he had made about police brutality and the functioning of the judicial system in the country.

In February 2011 Mr Bagirov attended a meeting with other lawyers to discuss problems encountered by the legal profession in Azerbaijan when he commented on police brutality and the recent death in custody of an individual, E.A., whose mother subsequently became his client. His comments were reported in the press.

At the request of the head of the Baku City Chief Police Department, the ABA instituted disciplinary proceedings against the applicant for defamation of the police. In August 2011 the Presidium of the ABA suspended the applicant from practising law for one year because he had breached lawyer confidentiality.

He challenged this decision before the courts, arguing that he had not disclosed any confidential information as E.A.'s mother had already given a press conference alleging that the police had tortured and killed her son before the February meeting and before she had become his client. The courts did not directly address his arguments, reiterating the Presidium's findings of a breach of confidentiality.

In 2014, further disciplinary proceedings were instituted against him for remarks that he had made while representing an opposition politician, Ilgar Eldar oglu Mammadov, at his criminal trial (see the case of *Ilgar Mammadov v. Azerbaijan (No. 2)*, application no. 919/15). The Presidium referred the case to the domestic courts, which in July 2015 ordered the applicant's disbarment. The first-instance court found in particular that his remarks about the functioning of the judicial system and about one judge in particular had "cast a shadow over our State" and "tarnished the reputation of the judiciary". The first-instance judgment was upheld by the Baku Court of Appeal in September 2015 and by the Supreme Court in January 2016.

Relying on Article 10 (freedom of expression) and Article 8 (right to respect for private and family life), Mr Bagirov alleges that the disciplinary sanctions breached his right to freedom of expression and respect for private life. He also alleges that his disbarment was to punish him for his statements, in breach of Article 18 (limitation on use of restrictions on rights) taken in conjunction with Articles 8 and 10.

Miljević v. Croatia (no. 68317/13)

The applicant, Rade Miljević, is a Croatian national who was born in 1944 and lives in Glina (Croatia).

The case concerns the applicant's conviction for defamation following statements he made in his defence in another set of proceedings against him for war crimes.

Mr Miljević was indicted in 2006 on suspicion of having participated in the killing of four detained civilians who had been taken from Glina prison in 1991 and executed. The incident was widely covered by the media in Croatia, in particular via a television show called *Istraga* ("Investigation").

In his closing arguments, the applicant alleged that his prosecution had been politically motivated and instigated by I.P., a retired colonel in the Croatian army well-known for his activities in uncovering crimes committed against Croats during the 1991-1995 war. He essentially alleged that I.P. had been involved in witness tampering during the proceedings and had orchestrated a virulent media campaign against him.

Mr Miljević was ultimately acquitted in 2012. The courts found that he had taken the four detained civilians from Glina Prison, but that there was no proof that he had been involved in or could have known about their execution.

In the meantime, the retired colonel brought proceedings against the applicant for defamation. The Municipal Court found him guilty in 2012, considering that the statements he had made during his closing arguments had amounted to a gratuitous and unsubstantiated attack on the colonel. The court found that the applicant had made the statements to cause damage to the colonel's reputation, and not to defend himself in the war crime proceedings. The applicant's conviction was upheld on appeal by the County Court in 2013, while his constitutional complaint was also dismissed. The applicant was ordered to pay a fine of 1,000 Croatian kunas (HRK – approximately 130 Euros) and I.P.'s legal representation.

Relying on Article 10 (freedom of expression), Mr Miljević alleges that his conviction for defamation was unjustified and unfair.

He also complains under Article 6 § 1 (right to a fair trial) that the appeal panel of the County Court which upheld his conviction for defamation lacked impartiality as it was composed of a judge who had also been involved in the proceedings against him for war crimes.

Tempel v. the Czech Republic (no. 44151/12)

The applicant, Robert Tempel, is a Czech national who was born in 1973. He is currently serving a sentence of life imprisonment in Valdice Prison (Czech Republic).

The case concerns repeated first-instance and appeal proceedings on a charge of murder.

Between September 2004 and March 2007 the applicant was acquitted four times of charges of murder by two different chambers of the Plzeň Regional Court at first instance. The appeal court, Prague High Court, remitted the case each time, finding fault with the first-instance courts' assessment of the evidence, in particular the way they had questioned the testimony of the main prosecution witness, which was the main evidence against the applicant.

In May 2007 the High Court quashed the fourth first-instance judgment in the applicant's favour and remitted the case to another first-instance court within its jurisdiction, the Prague Regional Court. That court in November 2008 found the applicant guilty of murder and sentenced him to life imprisonment.

It found that the witness's testimony had only minor contradictions and was credible as to the key facts. It was also corroborated by other evidence. The High Court upheld the conviction in December 2009. In July 2011 the Supreme Court dismissed an appeal on points of law by the applicant.

During the proceedings the Constitutional Court rejected three constitutional complaints by the applicant: over remitting the case to a different chamber of the same first-instance court; over remitting the case to a different first-instance court; and of breaches of Article 6 (right to a fair trial) of the Convention.

The applicant began proceedings for compensation over the length of the proceedings, which had lasted from March 2002 to April 2012. In 2013 the Prague 2 District Court found a violation of his right to a trial within a reasonable time, but dismissed his claim for compensation. That decision was upheld on appeal and by the superior courts, including the Constitutional Court in April 2016.

Relying on Article 6 § 1 (right to a fair trial), the applicant complains about his case being assigned to a different first-instance court and about the conduct of the appellate court. He also raises a complaint under the same provision about the length of the proceedings.

Ghoumid and Others v. France (nos. 52273/16, 52285/16, 52290/16, 52294/16, and 52302/16)

The applicants, Bachir Ghoumid, Fouad Charouali, Attila Turk, Redouane Aberbri and Rachid Ait El Haj are Moroccan nationals, except for the third applicant, who is Turkish. Mr Ghoumid, Mr Charouali and Mr Turk live in Mantes-la-Jolie, and Mr Aberbri and Mr Ait El Haj live in Les Mureaux. The case concerns these five individuals, who were convicted of participating in a criminal conspiracy to perpetrate an act of terrorism. After serving their sentences they were released in 2009 and 2010, then stripped of their French nationality in October 2015.

In a judgment of 11 July 2007 the Criminal Court of Paris convicted the five applicants for having, during the period 1995 to 2004, participated in a criminal conspiracy to perpetrate an act of terrorism. Mr Turk and Mr Aberbri lodged an appeal with the Paris Court of Appeal, which upheld their convictions on 1 July 2008.

In April 2015 the Minister of the Interior informed the applicants that, in view of the judgment of 11 July 2007 convicting them of an offence constituting an act of terrorism, he had decided to initiate the procedure to have their French nationality revoked, under Articles 25 and 25-1 of the Civil Code.

After the *Conseil d'État* had endorsed the procedure on 1 September 2015, the Prime Minister, by five decrees dated 7 October 2015, stripped the applicants of their French nationality. The applicants applied to the *Conseil d'État* for an interim measure to stay the execution of the decrees of 7

October 2015 and for their annulment on grounds of misuse of authority. The requests for an interim measure were rejected by five similar decisions on 20 November 2015 and, on 8 June 2016, the *Conseil d'État* rejected the requests for annulment in five similar decisions.

Mr Aberbri and Mr Ait El Haj were interviewed by the Deportation Board of the Yvelines *département* on 8 September 2016. On 21 October 2016 the Prefect of the Yvelines informed them that the Board had given a favourable opinion on their deportation. They were summoned on 26 October 2016 by the police, but they were not notified of a deportation order.

Relying on Article 8 (right to respect for private and family life), the applicants argue that the revocation of their nationality has breached their right to respect for their private life. Under Article 4 of Protocol No. 7 (right not to be tried or punished twice), they argue that their loss of nationality was a "disguised punishment" constituting a sanction for conduct in respect of which they had already been sentenced in 2007 by the Paris Criminal Court.

Moustahi v. France (no. 9347/14)

The three applicants are Mohamed Moustahi and his children Nadjima Moustahi and Nofili Moustahi, aged five and three at the relevant time. They are Comorian nationals, who were born in 1982, 2008 and 2010, and live in Mayotte.

The case concerns the conditions under which the children, apprehended when they unlawfully entered French territory in Mayotte, were placed in administrative detention together with adults, arbitrarily associated with one of them for administrative purposes, and expeditiously returned to the Comoros without a careful and individual examination of their situation.

Mr Moustahi entered the territory of Mayotte in 1994 and he has since lived there lawfully and continuously with a temporary residence permit that has been extended. The two children were born in Mayotte to an unlawfully resident Comorian mother. In 2011 a deportation order was issued against the mother, who was sent back to the Comoros with the two children; she entrusted them to their paternal grandmother and returned to Mayotte.

On 13 November 2013 the two children travelled on a makeshift boat bound for Mayotte. The 17 people on board were intercepted at sea by the French authorities on the morning of 14 November 2013. At 9 a.m. they underwent an identity check on a beach, then a health check at Dzaoudi hospital, and finally an administrative removal procedure was initiated against them on the same day. Pending their removal they were detained for approximately one hour and 45 minutes on the premises of the Pamandzi gendarmerie. The two children were administratively associated with Mr M.A., one of the migrants present on the boat, who had reportedly declared that he was accompanying the children. The children's names were entered on the removal order issued to M.A.; however, they were placed in detention without their names appearing on any detention order.

Mr Moustahi was notified of the presence of his children at the gendarmerie, in a holding cell, but was unable to make contact with them. The same day at 3 p.m. he lodged an appeal with the prefect requesting the suspension of the removal order and at 5.30 p.m. he referred the matter to the urgent applications judge of the Administrative Court (TA) of Mayotte.

The two children were placed on board a ship at 4.30 p.m. and returned to the Comoros.

On 18 November 2013, two days after the expiry of the time-limit laid down by Article L. 521-2 of the Code of Administrative Justice, the urgent applications judge of the Administrative Court of Mayotte dismissed Mr Moustahi's request. On 3 December 2013 the applicant appealed against this order to the urgent applications judge of the *Conseil d'État*. The Defender of Rights (Ombudsman), the GISTI and the CIMADE intervened to support him. On 10 December 2013 the *Conseil d'État* dismissed the appeal.

On 13 January 2014 Mr Moustahi submitted an application for family reunification to the consular authorities in the Comoros. In August 2014 long-stay visas were issued to the two children, who have been living with their father since September 2014.

Relying on Article 3 (prohibition of inhuman and degrading treatment), the second and third applicants complain about their detention in the company of unknown adults, and their arbitrary administrative attachment to one of them, followed by their immediate return to the Comoros, without an individual and careful examination of their situation. Under Article 3 the first applicant complains of feelings of fear, anxiety and powerlessness in the face of the treatment suffered by his children. Relying on Article 5 § 1 (right to liberty and security), the second and third applicants complain that they were deprived of their liberty unlawfully and unjustifiably. Under Article 5 § 4 (right to a speedy decision on the lawfulness of detention), they complain that there has been a violation of their right to judicial review of a measure involving deprivation of liberty, as there was no legal act formalising their detention which could be appealed against. Relying on Article 8 (right to respect for private and family life), the applicants complain of the French authorities' refusal to entrust the children to their father rather than placing them alone in administrative detention and to allow contact between them during the children's detention. Under Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens), the second and third applicants claim to have been subjected to a measure of collective expulsion without an individual examination of their situation. Lastly, relying on Article 13 (right to an effective remedy) in conjunction with Articles 3 and 8 and with Article 4 of Protocol No. 4, they submit that they did not have an effective remedy by which to complain about their removal. They allege that the removal was implemented without the authorities having taken any precautions to ensure that their return would take place in the right conditions, that it breached their right to their family life and that it went ahead without any examination of their individual situation.

Stavropoulos and Others v. Greece (no. 52484/18)

The applicants, Nikolaos Stavropoulos, Ioanna Kravari and their daughter, Stavroula-Dorothea Stavropoulou, are Greek nationals. They live in Oxford (United Kingdom).

The case concerns the registration of Stavroula-Dorothea Stavropoulou's first name on her birth certificate and the practice of certain registry offices in Greece indicating when a child is named by a civil act.

The applicant couple's daughter was born in 2007 and they registered her birth in the Amarousio registry office. Her first name was recorded on her birth certificate with the handwritten note "naming" (*ονοματοδοσία*) next to it in brackets.

In October 2007 the applicants applied to the Supreme Administrative Court for the annulment of the registration in so far as it concerned the note "naming". They argued that it constituted a reference to the fact that their child had not been christened and thus revealed their religious beliefs.

Their application was rejected as inadmissible because the note next to the third applicant's name merely repeated the title of the relevant domestic law, namely Article 25 of Law no. 344/1976, which provided that the civil act of "naming" was the only legal way of acquiring a name.

Relying on Article 9 (freedom of thought, conscience, and religion) and Article 8 (right to respect for private and family life), the applicants allege that the note "naming" on their daughter's birth certificate had a connotation, namely that she was not christened, and that this amounted to an interference with their right not to be obliged to manifest their beliefs.

They argue in particular that, despite the fact that Greek legislation only recognised the civil act of "naming", in practice registry offices presented christening as an alternative. This meant that the word "naming" was only added to a birth certificate when parents chose to declare the name of

their child without christening him or her, whereas no such note was written next to the name of a child who had been christened.

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.

Tuesday 23 June 2020

Name	Main application number
Electronservice-Nord S.A. v. the Republic of Moldova	12918/12
Furtună v. the Republic of Moldova	72636/13
Spiridonov v. the Republic of Moldova	41541/13
Fatullayev v. Russia	81060/12
Gayeva v. Russia	688/11
Ivanov v. Russia	62364/10
Kommersant and Others v. Russia	37482/10
Kommersant and Voronov v. Russia	422/11
Mandrigelya v. Russia	34310/13
Sokiryanskaya and Others v. Russia	4505/08
Uzhakhov and Albagachiyeva v. Russia	76635/11
Buluş and Others v. Turkey	41788/09
Celal Altun v. Turkey	25119/11
Kaya v. Turkey	27110/08
Mengirkaon v. Turkey	5825/09
Saraç and Others v. Turkey	53100/11
Sarı v. Turkey	2429/13
Yaşar v. Turkey	40381/10
Yiğit and Others v. Turkey	74521/12
Yılmaz v. Turkey	19607/10

Thursday 25 June 2020

Name	Main application number
Vevecka v. Albania	40554/04
Raynovi v. Bulgaria	53304/18
Arkania v. Georgia	2625/12
Antipov v. Russia	8336/07
Vinogradov v. Russia	50053/06
Bucha v. Slovakia	16231/17
A.T.Ö. v. Turkey	63192/12
Akıncı v. Turkey	38758/09

Name	Main application number
Beyhan v. Turkey	10150/10
Kaya v. Turkey	38477/10
Köylü v. Turkey	62148/10
Mim Mermer Madencilik San. ve Tic. A.Ş. v. Turkey	43978/07
Özkan v. Turkey	50163/12
Özturan v. Turkey	68103/11
Sarar v. Turkey	6683/10
Bevz and Others v. Ukraine	17955/13
Borzykh and Othersv. Ukraine	5353/14
Lavrik and Others v. Ukraine	63542/13

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