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

Press Release issued by the Registrar of the Court

ECHR 166 (2020)
11.06.2020

Judgments and decisions of 11 June 2020

The European Court of Human Rights has today notified in writing 11 judgments[1] and 15 decisions[2]:

five Chamber judgments are summarised below; separate press releases have been issued for three other Chamber judgments in the cases of *Vujnović v. Croatia* (application no. 32349/16), *Baldassi and Others v. France* (nos. 15271/16, 15280/16, 15282/16, 15286/16, 15724/16, 15842/16, and 16207/16) and *Carl Jóhann Lilliendahl v. Iceland* (no. 29297/18);

three Committee judgments, concerning issues which have already been submitted to the Court, and the 15 decisions, can be consulted on *Hudoc* and do not appear in this press release.

The judgments below are available only in English.

P.N. v. Germany (application no. 74440/17)

The applicant, Mr P.N., is a German national who was born in 1961 and lives in Dresden (Germany).

The case concerned a police order to collect information to identify the applicant, such as photographs of his face and body, including possible tattoos, as well as finger and palm prints.

In August 2011 the Dresden police, relying on the Code of Criminal Procedure, ordered the gathering of the identification data as criminal proceedings had been opened against the applicant for receiving and handling stolen goods. He also had a previous criminal record and in the police's view the identification measures would help in the investigation of any future offences.

The applicant appealed against the order but in May 2012 the Dresden police dismissed the appeal, while in March 2015 the Dresden Administrative Court dismissed a further appeal. Referring to his previous record, the court found that under the Code of Criminal Procedure it was legal to collect someone's data if there was a possibility that it might be needed for a future investigation. That was the case even if the proceedings for the handling of stolen goods had been discontinued, as they had been in June 2012.

In May 2017 the Federal Constitutional Court declined to consider a constitutional complaint by the applicant. The police had already collected the data in question, in March 2017.

The applicant complained that the police order to collect identification data from him had violated his rights protected by Article 8 (right to respect for private and family life, the home and correspondence) of the European Convention on Human Rights.

No violation of Article 8

[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.

Kandarakis v. Greece (nos. 48345/12, 48348/12, and 67463/12)

The applicants, Alexandros Kandarakis and Michail Kandarakis, are Greek nationals who were born in 1938 and 1979 respectively and live in Athens.

The case concerned court decisions on the payment of lawyers' fees in expropriation proceedings.

The applicants, lawyers registered with the Athens Bar Association, represented clients who won compensation proceedings for expropriated property. The first set of proceedings was held in the town of Kalavryta, the second in Korinthos, and the third in Athens.

Under the applicable law, the courts had to set costs in such expropriation cases, including lawyers' fees. The fees were then to be deposited with the Consignment Deposits and Loans Fund, which passed them on to the lawyers' bar association, which then paid them to the lawyers, minus a fee.

In the applicants' case, the ERGOSE AE company, which had been the defendant in the first two cases, deposited the fees with the Consignment Deposits and Loans Fund for the benefit of the bar associations of Kalavryta and Korinthos after judgments issued in 2007. In the third case, in which the compensation judgment was issued in 2002, the fees were deposited with the Fund by the defendant, the Ministry for the Environment, Regional Development and Public Works, to the benefit of the Athens Bar Association, but the Fund declined to pass the money on.

The applicants brought proceedings related to the first two cases to have the money deposited to the benefit of the Athens Bar Association. Their requests were declined on the grounds that they lacked standing as the bar association itself had to bring the actions, which it duly did.

In the first case, an appeal court in 2017 referred the case to the competent court and a final decision is still pending. In the second case, the final court decision found in 2018 that the Korinthos Bar Association had already paid over half of the amount awarded as lawyers' fees to the Athens Bar Association and that the claim related to the other half had become time-barred.

In the third case, the applicant challenged the Fund's refusal to pay the fees to the Athens Bar Association, but his case was again ultimately unsuccessful on the grounds that only the association could initiate proceedings. It began such an action in November 2013, which eventually led to the Fund paying over the required amount.

The applicants complained in particular that the dismissal of their actions against the Consignment Deposits and Loans Fund to have the amounts fixed as lawyers' fees deposited to the benefit of the Bar Association on the grounds that they lacked standing had violated their rights under Article 6 § 1 (access to court).

Violation of Article 6 § 1

Just satisfaction: 10,000 euros (EUR) each to Alexandros Kandarakis and Michail Kandarakis (non-pecuniary damage) and EUR 1,500 to the applicants jointly (costs and expenses)

Markus v. Latvia (no. 17483/10)

The applicant, Dainis Markus, is a Latvian national who was born in 1953.

The case concerned the imposition of the criminal penalty of confiscation of property.

Mr Markus was convicted in 2008 of asking for a bribe and he was sentenced to four years' imprisonment with an ancillary penalty of confiscation of property, the particular property to be confiscated not being specified. Under domestic law, the measure applied to the entirety of the convicted person's property.

The investigator in the case had earlier registered a restriction against the title to 11 properties belonging to the applicant. At least eight of those properties were eventually transferred to the

State. The judgment was upheld on appeal and Mr Markus subsequently lodged a constitutional complaint.

In January 2011 the Constitutional Court discontinued the proceedings but made various findings about the criminal-law provisions on confiscation of property as a penalty. It noted among other things that the law did not specify what property could not be confiscated and so the measure could infringe the rights of a convicted person's family members. There was also no connection with how a property had been acquired, meaning that if a property had been inherited, received as a gift or purchased using the convicted person's salary it could still be confiscated.

Furthermore, the scope of the measure was also unclear, with domestic courts differing as to whether they had discretion to adapt the penalty to individual circumstances, and whether they could order partial confiscation of property or had to confiscate everything.

Amendments to the Criminal Law related to property confiscation took effect in April 2013, giving the courts greater discretion when applying the penalty and obliging them to specify which property would be confiscated.

Mr Markus complained in particular under Article 1 of Protocol No. 1 (protection of property) that the criminal penalty of confiscation of property, which had led to the confiscation of his legally acquired property, had been disproportionate.

Violation of Article 1 of Protocol No. 1

Just satisfaction: Mr Markus did not submit a claim for just satisfaction.

Zirnīte v. Latvia (no. 69019/11)

The applicant, Ilona Zirnīte, is a Latvian national who was born in 1977 and lives in Riga.

The case concerned her complaints that a key witness against her had not been called during appeal proceedings, preventing the applicant from pointing out contradictions in that witness's pre-trial and trial testimonies, and that the criminal punishment of property confiscation had been disproportionate.

In October 2005 the applicant agreed to sell a limited liability company, SIA Raiņa bulvāra nams, whose only asset was an apartment building, to a woman, M.R. Shortly before the deal was signed the applicant arranged for the company to take a loan from a bank, which would then lend it further to the applicant. Accordingly, 208,000 euros (EUR) was transferred to the applicant's private account upon the sale of the company.

Ms Zirnīte was charged in 2007 with large-scale misappropriation of funds and money laundering. The court heard the applicant and 11 witnesses, including M.R. The applicant was acquitted at first instance: the court considered that the factual basis of the charges had been established, but it could not be established beyond reasonable doubt that she had intended to misappropriate the funds.

On appeal, the Criminal Chamber of the Supreme Court quashed the first-instance judgment in November 2010 and convicted the applicant of both charges, finding an intent to misappropriate the funds. The court refused a request by the applicant's lawyer to call three witnesses back to the stand, including M.R., whom the lawyer wanted to question again about pre-trial testimony which the appeal court had not reviewed. The court refused the recall request, finding in particular that the testimony in question at first instance had been complete.

The applicant received a suspended prison sentence of six years with a confiscation order for a property called Bramberģes pils. In May 2011 the Senate of the Supreme Court dismissed an appeal on points of law by the applicant.

Relying in particular on Article 6 §§ 1 and 3 (d), the applicant complained that the appellate court which had convicted her following an acquittal at first instance court had not examined M.R., who the applicant argued was the principal witness in the case, preventing the defence from referring to M.R.'s pre-trial statements.

No violation of Article 6 §§ 1 and 3 (d)

M.S. v. Slovakia and Ukraine (no. 17189/11)

The case concerned an Afghan migrant's complaint about his arrest in Slovakia and return to Ukraine, then Afghanistan, with limited access to legal advice and interpreters.

The applicant, Mr M.S., is an Afghan national. His date of birth was in dispute: the applicant alleged that he was born in 1993 or 1994, while the authorities in Slovakia and Ukraine recorded the date of January 1992.

According to the applicant, he left Afghanistan in May 2010, after his father, who used to work for the National Security Department of Afghanistan, had been killed in 2005 and a member of his family had received a threatening letter.

He entered Ukraine in early July 2010. On 23 September 2010 he was arrested by the Slovakian border police while crossing into Slovakia illegally. He was interviewed, interpreting being provided from Slovak to English and then, by a fellow Afghan migrant, from English to Pashto. According to the record of the interview, he stated that his intention was not to apply for asylum in Slovakia, but to travel to western Europe.

A decision was taken to expel him to Ukraine and he was handed over to the Ukrainian authorities the next day and placed in a temporary holding facility. In October 2010 a court ordered his expulsion from Ukraine and his detention pending expulsion. He was transferred to temporary accommodation for foreign nationals and stateless persons before eventually being expelled to Kabul in March 2011.

In the meantime, he had lodged an asylum request with the Ukrainian migration authorities, submitting that he feared persecution if returned to Afghanistan. However, the authorities had rejected his request because they had found that he did not meet the definition of a refugee under domestic law and the Refugee Convention.

He maintained that throughout these procedures he had tried to bring to the attention of both the Slovakian and Ukrainian authorities the fact that he was a minor, without any action being taken.

He is currently living in Afghanistan, and alleged that he was forced to change his place of residence frequently for fear of the people who had killed his father.

The applicant made several complaints under in particular Article 3 (prohibition of inhuman or degrading treatment) and Article 5 §§ 2 and 4 (right to be informed promptly of reasons for arrest/right to have lawfulness of detention decided speedily by a court), alleging, inter alia, that he had been expelled to Afghanistan without proper examination of his asylum claim and the risks he faced, and that he had not been informed of the reasons for his detention in Ukraine.

He also submitted, under Article 34 (right to individual petition), that an NGO representative had been denied access to him in Ukraine, preventing him from lodging an application for an interim measure with the European Court of Human Rights.

Complaints against Slovakia declared **inadmissible**
Violation of Article 3 (investigation) by Ukraine
Violation of Article 5 §§ 2 and 4 by Ukraine
No violation of Article 34 by Ukraine

Just satisfaction: EUR 2,300 (non-pecuniary damage)

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