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

Press Release
issued by the Registrar of the Court

ECHR 290 (2017)
03.10.2017

Judgments of 3 October 2017

The European Court of Human Rights has today notified in writing 21 judgments[1]:

eight Chamber judgments are summarised below; separate press releases have been issued for five other Chamber judgments in the cases of *Alexandru Enache v. Romania* (application no. 16986/12), *D.M.D. v. Romania* (no. 23022/13), *Dmitriyevskiy v. Russia* (no. 42168/06), *Novaya Gazeta and Milashina v. Russia* (no. 45083/06), and *N.D. and N.T. v. Spain* (nos. 8675/15 and 8697/15);

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

The judgments in French below are indicated with an asterisk (*).

Čović v. Bosnia and Herzegovina (application no. 61287/12)

The applicant, Fadil Čović, is a national of Bosnia and Herzegovina who was born in 1953 and lives in Hadžići (Bosnia and Herzegovina). The case concerned his detention for almost one year on suspicion of war crimes.

Mr Čović was arrested and detained in November 2011 on suspicion of war crimes during the 1992-95 war. Over the following year his detention was regularly reviewed and extended on the ground that there was a risk of his obstructing the course of justice by exerting pressure on witnesses and his co-accused or by destroying evidence. He repeatedly appealed against each decision, without success. He ultimately lodged a constitutional appeal challenging the lawfulness and length of his detention, but it was rejected as the Constitutional Court could not reach a majority. He was eventually released in November 2012. The criminal proceedings against him are apparently still pending.

Relying in particular on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) of the European Convention on Human Rights, Mr Čović notably complained that the Constitutional Court's rejection of his appeal simply because they could not reach a majority – and thus without deciding on the admissibility or merits – had denied him an effective procedure by which to challenge the lawfulness of his detention.

Violation of Article 5 § 4

Just satisfaction: 1,500 euros (EUR) (non-pecuniary damage) and EUR 61.35 (costs and expenses)

Körtvélyessy v. Hungary (no. 3) (no. 58274/15)

The applicant, Zoltán Körtvélyessy, is a Hungarian national who was born in 1965 and lives in Budapest. The case concerned his complaint about the authorities banning a demonstration he had planned.

[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

On 16 April 2010 the police authorities banned a demonstration Mr Körtvélyessy intended to organise the next day in Budapest in front of the Venyige Street prison to draw attention to "the situation of political prisoners". They notably found that there was no alternative route for the traffic in the neighbourhood, meaning that a demonstration would cause great disruption. Because of the ban, the demonstration did not take place.

Mr Körtvélyessy requested judicial review of the police decision. His complaint was, however, rejected on 22 April 2010 on the ground that the demonstration would have seriously hampered the flow of traffic in the vicinity.

Relying in particular on Article 11 (freedom of assembly and association) of the European Convention, Mr Körtvélyessy alleged that the reasons underlying the ban had been political, arguing that Venyige Street had been wide enough to accommodate the expected 200 participants without major incident.

Violation of Article 11

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Körtvélyessy. It further awarded Mr Körtvélyessy EUR 1,000 for costs and expenses.

Silva and Mondim Correia v. Portugal (nos. 72105/14 and 20415/15)

The applicants, Tomás Silva and Mário Alberto Mondim Ferreira, are Portuguese nationals who were born in 1944 and 1970 respectively and live in Oliveira de Azeméis and Vila Real (Portugal). Both born out of wedlock, they complained about the dismissal of paternity proceedings they had brought before the Portuguese courts.

The applicants brought proceedings for the judicial recognition of paternity in 2012 and 2014, when they were 68 and 44 years old, respectively. They both claimed before the courts that they had always been aware of their respective father's identity. However, the courts ultimately dismissed their claims because they had not complied with the time-limit provided for under the Portuguese Civil Code, namely ten years from the date on which they had reached the age of majority. The Portuguese Supreme Court of Justice based their decision on a ruling of 2011 by the Constitutional Court which had found that the ten-year time-limit was not incompatible with the Constitution. That ruling had found in particular that the time-limit was reasonable: it allowed an individual to have sufficient time, having reached the age of majority, to decide whether or not to start paternity proceedings, but at the same time safeguarded legal certainty for the putative father and his family.

Relying on Article 8 (right to respect for private and family life), they complained about the dismissal of their paternity proceedings as time-barred, alleging that it had not been reasonable to impose a time-limit on the right to know one's biological identity.

No violation of Article 8

Mishina v. Russia (no. 30204/08)*

The applicant, Rimma Mishina, is a Russian national who was born in 1949 and lives in Kazan (Russia). The case concerned the investigation into the circumstances of the death of her son (V.) and its duration.

On 17 November 2005 V. was found dead in his flat. The forensic medical report found that death had resulted from acute morphine poisoning by parenteral administration. It established that V. had two injection marks on the right arm and a scratch in the lumbar region; it also identified the presence of ethyl alcohol and morphine in V.'s blood, in quantities corresponding to a state of acute intoxication.

On 19 November 2005 the prosecutor's department refused to open a criminal investigation, taking the view that V.'s death had not been violent. Ms Mishina lodged an appeal against that decision, arguing that the preliminary investigation had been superficial. She submitted, in particular, that her son had not been a drug addict and that, not being left-handed, he would have been unable to inject himself in the right arm. She submitted that his death had been caused by the intentional act of a third party. The investigation was subsequently reopened, then discontinued, on numerous occasions.

On 28 February 2011 a criminal investigation for manslaughter was opened. In August 2011 it was decided to discontinue those proceedings, but Ms Mishina was not informed of this. A new order discontinuing the proceedings was subsequently issued in December 2011, and Ms Mishina claims that she was unable to have access to the case file until 10 May 2012.

Relying on Article 2 (right to life), Ms Mishina alleged that the investigation into the circumstances of her son's death had been ineffective; she also complained about its excessive length.

Violation of Article 2 (investigation)

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 9,070 (costs and expenses)

Shevtsova v. Russia (no. 36620/07)*

The applicant, Lyubov Shevtsova, is a Russian national who was born in 1961 and lives in Nizhniy Novgorod (Russia). The case concerned alleged ill-treatment sustained by Ms Shevtsova during a dispute with two police officers.

According to Ms Shevtsova, on 6 November 2001 two police officers in plain clothes came to her sister's house in search of the latter's son (O.), who was suspected of having committed an offence. As her sister was intoxicated, Ms Shevtsova informed the police officers that O. was absent. The police officers drew up a summons for O. to appear at the police station and handed it over to Ms Shevtsova. She alleges that, after having accepted the summons, she asked the police officers to leave the premises. They allegedly insulted her and grabbed her hand so that she would fall down the entry steps. F., the companion of Ms Shevtsova's sister, intervened with the police officers, who pushed him to the ground and struck him; they then handcuffed him and took him to the police station. They did not arrest Ms Shevtsova.

According to the Government, Ms Shevtsova behaved in an aggressive manner towards the police officers and insulted them; she allegedly tore up the summons and threw it in the face of one of the police officers, who asked her to accompany them to the police station in order to file a report for abusive behaviour towards a person exercising public authority.

After the incident, Ms Shevtsova went to the traumatology unit for the Avtozavodskiy district of Nizhniy Novgorod, where she was given a medical certificate recording bruising to the soft tissues of the right eyebrow. On 9 November 2001 the forensic doctor at the Nizhny Novgorod regional forensic medical office also noted the bruising in question, as well as other scratches and hematoma on various parts of the applicant's body.

Ms Shevtsova submitted a written complaint to the prosecutor on 8 November 2001, complaining of the ill-treatment inflicted on her by the two police officers. Between 2001 and 2009 the investigating authorities issued several decisions refusing to open a criminal investigation. Ms Shevtsova's appeals to the Avtozavodskiy district court of Nizhniy Novgorod and the Nizhniy Novgorod Regional Court were dismissed in February and April 2010 respectively. Ms Shevtsova was not prosecuted for abusive behaviour towards a person exercising public authority.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Ms Shevtsova alleged that she had been subjected to inhuman or degrading treatment by the police and that she had not had an effective remedy in respect of that complaint.

Violation of Article 3 (investigation)
Violation of Article 3 (treatment)

Just satisfaction: EUR 19,500 (non-pecuniary damage)

Tikhomirova v. Russia (no. 49626/07)*

The applicant, Tatyana Tikhomirova, is a Russian national who was born in 1954 and lives in Serpukhov (Russia). The case concerned the investigation into the circumstances surrounding the death of her son (T.).

On 4 December 2006 T. was seriously injured in a road-traffic accident in which his vehicle left the road and crashed into a tree. At the time of the accident there were three persons in the vehicle. T. was taken to hospital, where he died on 16 December 2006.

On 14 December 2006 investigator R. refused to open a criminal investigation into the circumstances of the accident, holding that T. was driving the vehicle and had lost control of it, and that he had been responsible for the accident. On 16 January 2007 the prosecutor set aside that decision, ordering an additional investigation.

On 4 June 2007 Ms Tikhomirova asked the investigating authorities to carry out additional investigative measures in order to establish whether, at the time of the accident, her son was indeed driving the vehicle. On 3 July 2007, not having received a reply to her request, she complained to the Prosecutor about the investigator's inactivity. On 13 July 2007 the deputy prosecutor noted that the investigation had not been conducted with the requisite diligence and that it had not enabled all the circumstances of the accident to be elucidated. He ordered additional investigative measures.

On 27 August 2007 the Serpukhov municipal court, on an application by Ms Tikhomirova, noted that the investigating authorities had not carried out the measures identified by the deputy prosecutor in his decisions of 16 January and 13 July 2007, and concluded that their inactivity was unlawful. It ordered that the measures in question be carried out. On 21 April 2008 the Moscow Regional Court issued a decision criticising the investigating authorities' failings and passivity in conducting the investigation. It further instructed the authorities concerned to inform it within one month of the measures that had been taken.

On 5 March 2009 the investigating authorities issued a decision refusing to open a criminal investigation. This decision was set aside on 23 March 2009 by the deputy head of the investigative committee at the Serpukhov Office of the Ministry of the Interior, who requested an additional investigation. The case file available to the Court does not contain information on the implementation of the requested measures.

Relying on Article 2 (right to life), Ms Tikhomirova alleged that the investigation into the circumstances of her son's death had been ineffective; she also complained about its excessive length.

Violation of Article 2 (investigation)

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 1,040 (costs and expenses)

Viktor Nazarenko v. Ukraine (no. 18656/13)

The applicant, Viktor Nazarenko, is a Ukrainian national who was born in 1939 and lives in Kryvyy Rig (Ukraine). The case concerned a dispute between Mr Nazarenko and the pension authorities.

In February 2011 the Ukrainian courts ruled at first instance that Mr Nazarenko's pension should be increased in line with the rise in national average wages. Mr Nazarenko was then informed, in November 2011, that the pension authorities had lodged an appeal. Three months later he wrote to the Court of Appeal to enquire about the date of the appeal hearing in his case. According to him, however, he subsequently received no information about the proceedings until February 2013 when he received the Court of Appeal's final decision – dated June 2012 – quashing the first-instance judgment in his favour. The Government disagreed, alleging that a copy of both the appeal and the judge's ruling opening appeal proceedings in the case was served on Mr Nazarenko.

Relying on Article 6 § 1 (right to a fair hearing), Mr Nazarenko complained that the proceedings on his pension claim had been unfair as he had not been sent a copy of the appeal lodged in his case and had therefore not been given the opportunity to comment on it.

Violation of Article 6 § 1

Just satisfaction: EUR 1,000 (non-pecuniary damage)

Vilenchik v. Ukraine (no. 21267/14)

The applicant, Andrew Vilenchik, is a national of the United States of America who was born in 1978 and lives in Minneapolis, Minnesota (USA). The case concerned his complaint that the Ukrainian authorities had refused to order his son's return to the USA.

Mr Vilenchik had a son with his wife, a Ukrainian national, in 2009. They lived together in Minneapolis until June 2011 when, following a family holiday in Ukraine, his wife and son stayed on and Mr Vilenchik returned to the USA alone. In September 2012 the courts in the USA dissolved the marriage at his request.

In the meantime, in August 2012, Mr Vilenchik had brought proceedings in Ukraine for the return of his son to the USA under the Hague Convention (on the Civil Aspects of International Child Abduction). In those proceedings the domestic courts ultimately found – in December 2014 – that the child had lived in Ukraine for more than a year before his father submitted a request for his return; that, given the circumstances, the child's retention in Ukraine could not be regarded as wrongful within the meaning of the Hague Convention and that there were no grounds to make the return order. They considered that the child was entirely settled in Ukraine and his return to the USA would not be in his best interests.

Relying on Article 8 (right to respect for family life), Mr Vilenchik complained about the domestic courts' decision refusing to return his son to the USA. He alleged in particular that the domestic courts had failed to properly examine all the circumstances of his case and that the overall length of the proceedings had been excessive.

No violation of Article 8 – as regards the manner in which Mr Vilenchik's claim under the Hague Convention was examined on the merits
Violation of Article 8 – as regards the requirement of promptness of the Hague Convention proceedings

Just satisfaction: EUR 3,000 (non-pecuniary damage)

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)

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.