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

Press Release
issued by the Registrar of the Court

ECHR 392 (2017)
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Judgments of 19 December 2017

The European Court of Human Rights has today notified in writing 12 judgments[1]:

six Chamber judgments are summarised below; separate press releases have been issued for two other Chamber judgments in the cases of *Ramda v. France* (application no. 78477/11) and *Öğrü and Others v. Turkey* (nos. 60087/10, 12461/11, and 48219/11);

four 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 below are available only in English.

Peňaranda Soto v. Malta (application no. 16680/14)
Yanez Pinon and Others v. Malta (nos. 71645/13, 7143/14, and 20342/15)

Both cases concerned conditions of detention and access to medical care in the Corradino Correctional Facility in Malta.

The applicant in the first case, Luis Fernando Peňaranda Soto, is a Costa Rican national who was born in 1977. The applicants in the second case are: Miguel Angel Yanez Pinon, a Mexican national; Mana Owusu, a Ghanian national; and Jose Luis Del Rosario, a Dutch national. They were born in 1963, 1976, and 1961 respectively. They are or were all detained in the Corradino Correctional Facility following criminal convictions, mostly for drug-related offences. Mr Peňaranda Soto was detained in the facility from 2010 but released in 2016 under an amnesty. Mr Yanez Pinon was also released in 2016 after serving a 13-year sentence. The other two applicants have been in detention since 2012 (Mr Owusu) and 2010 (Mr Del Rosario).

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, they all complained about the conditions of their cells, which they alleged were poorly lit and ventilated, too hot in the summer and not equipped with running or drinking water.

Mr Peňaranda Soto, the applicant in the first case, made a number of other claims under Article 3 about the conditions of his detention, alleging that he had been kept in solitary confinement for two weeks in July 2013 after being assaulted by another prisoner. He claimed in particular that he had been made to wait for two hours before being given any medical assistance following the assault and that, although he had then been taken to hospital and treated for a broken ankle and a head injury, there had been a delay in providing him with crutches afterwards and nurses had refused to visit him in solitary confinement. He further alleged that there had been subsequent failures in providing him with psychiatric treatment, physiotherapy for his ankle and follow-up appointments for his head injury.

The Government denied that Mr Peňaranda Soto had been placed in solitary confinement, submitting that he had been held in a cell near the guard room for his own safety before being transferred a few weeks later to another cell. It also submitted that various tests had been carried

[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

out and treatment provided immediately following the assault, and that a number of follow-up appointments at the hospital had been on record. Furthermore, when Mr Peňaranda Soto requested psychological help in 2014 he was seen regularly by a psychologist until his release.

The applicants in the second case also made a number of additional claims about the facility's conditions, including that it was infested with rats and cockroaches, did not provide adequate food or clothing, had an asbestos problem and tolerated passive smoking. All three applicants also made complaints about inadequate medical care for various ailments: Mr Yanez Pinon for not being referred to a psychiatrist despite his requests; Mr Owusu for headaches and delayed referral to an ophthalmologist; and Mr Del Rosario for not receiving treatment for his arthritis or being provided with tablets to treat a migraine.

One of the applicants in the second case, Mr Owusu, brought domestic proceedings to complain about these conditions of detention. His complaint was however dismissed in June 2016 for failure to submit evidence to prove his case.

According to the Government, pest control was carried out in the facility on a regular basis and the food was adequate. It also submitted photographs of various dishes served at the facility and stated that the dust in the prison was not from asbestos but was from Maltese limestone used to build the prison walls. The applicants were regularly seen by doctors and prescribed the relevant medicine.

In general, the Government contended that all four applicants were held in individual cells which were unlocked for up to ten hours per day, and even in the highest security unit (where the first applicant had been held) for a few hours per day, allowing them to move freely around common areas and access the exercise yards.

Lastly, Mr Peňaranda Soto alleged under Article 34 (right of individual petition) that the prison authorities had failed to forward his letters to the European Court of Human Rights and that this had been in order to dissuade him from pursuing his case.

No violation of Article 3 – in both cases
Violation of Article 34 - in respect of *Peňaranda Soto*

Just satisfaction: 3,000 euros (EUR) to Mr Peňaranda Soto for non-pecuniary damage

Khayrullina v. Russia (no. 29729/09)

The applicant, Faniya Khayrullina, is a Russian national who was born in 1957 and lives in Novyy (Tatarstan Republic, Russia). The case concerned her allegation that her husband had been ill-treated by the police when held for questioning as a witness in a murder investigation and that as a result he had died three months later.

According to the official records, Ms Khayrullina's husband was taken on 13 September 2002 to a police station in order to verify his identity. He ended up though being interviewed by the investigator in charge of a murder investigation, and admitted to having had a drink at the victim's house with a friend. Immediately afterwards, on being interviewed by a field officer, he changed his testimony and admitted that his friend had punched the murder victim during a quarrel. He was apparently told he could leave at 8 p.m., but had to come back the next day for another interview.

He was, however, found unconscious the same evening at the police station. He was taken to hospital, but died three months later without ever regaining consciousness. According to the autopsy report, he had died of asphyxia following strangulation.

The authorities subsequently concluded that Mr Kharyrullin had attempted suicide which had later resulted in his death. Both in the initial stages of an internal inquiry and throughout the subsequent criminal investigation, the investigating authorities essentially relied on testimony from medical professionals, including paramedics called to the police station to provide emergency care, stating

that Mr Kharyrullin had had no visible injuries. The investigation, which is still ongoing has been discontinued on a number of occasions since 2003 but was reopened with instructions from the prosecuting authorities to clarify certain contradictions, such as the place where Mr Kharyrullin had been found – in a cell, interrogation room or on a fifth floor balcony. Most recently, in November 2010, a decision was issued discontinuing the investigation owing to a lack of evidence to prove that any police officer had driven him to suicide.

In concurrent civil proceedings brought by Ms Kharyrullina for compensation, she was awarded 250,000 Russian roubles (approximately 7,066 euros) for her own psychological suffering as result of her husband's death. The courts – ultimately the Supreme Court in 2009 – refused, however, to award her compensation for her claim related to her husband's unlawful detention and the ineffective investigation.

Relying essentially on Article 2 (right to life), Ms Khayrullina alleged that her husband had been tortured while in police custody, specifically by suffocation with a gas mask. She stated that this had been confirmed by the suspect in the murder investigation, who had been held at the police station at the same time as her husband, as he had claimed to have been ill-treated in the same way and initially even confirmed hearing her husband screaming in the interrogation room next to him. She alleged that the police had thus been either directly responsible for her husband's death or drove him into attempting suicide and that the ensuing investigation had been ineffective.

She further complained under Article 5 § 1 (right to liberty and security) and Article 5 § 5 (right to compensation) that her husband had been unlawfully taken to the police station and detained and that her related compensation claim had been turned down.

Violation of Article 2 (right to life)
Violation of Article 2 (investigation)
Violation of Article 5 § 1
Violation of Article 5 § 5

Just satisfaction: EUR 3,000 (pecuniary damage), EUR 43,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

Krsmanović v. Serbia (no. 19796/14)

The applicant, Đorđe Krsmanović, is a Serbian national who was born in 1975 and lives in Zemun (Serbia). The case concerned the investigation into his allegation of ill-treatment when he had been arrested and detained in the context of a large-scale police operation ordered following the assassination in 2003 of Serbian Prime Minister, Zoran Đinđić, and the Serbian Government's declaration of a state of emergency.

Mr Krsmanović was a member of the criminal group linked to the Zemun Clan (*Zemunski klan*), held responsible for the Prime Minister's assassination. During the police operation, known as Operation Sabre (*Sablja*), all members of the Zemun Clan and groups linked to it were arrested, including Mr Krsmanović.

Mr Krsmanović alleges that he was subjected to physical and verbal abuse, both during his arrest on 1 April 2003 and over the next 11 days, when he was held in solitary confinement at a police station. Over this period, he claims that he was routinely taken out of his cell for questioning and that he was beaten, kicked and had a truncheon inserted into his anus several times. On being transferred to a prison in Belgrade, he was examined by a prison doctor who reported bruising on the soles of his feet, the palms of his hand, and on his face, shoulders and buttocks. He was eventually charged, among other things, with drugs offences and sentenced to four years and ten months' imprisonment. He was released in June 2004 pending the outcome of appeal proceedings.

Mr Krsmanović's allegation of ill-treatment was investigated by three different authorities – the Inspector General's Service following a complaint brought by his mother in 2004; the prosecutor's office following a complaint lodged by Mr Krsmanović himself in 2007; and an investigative judge when Mr Krsmanović took over the criminal proceedings as a subsidiary prosecutor in 2008. However, all three investigations were terminated owing to a lack of evidence, either of ill-treatment or of someone's guilt. Several police officers were interviewed during the investigations, but no officers involved in the alleged abuse or any eyewitnesses were ever identified.

Mr Krsmanović lodged an appeal on points of law with the prosecutor's office and a constitutional appeal; both were rejected in 2010 and 2013, respectively.

Relying primarily on Article 3 (prohibition of inhuman or degrading treatment), Mr Krsmanović complained of the authorities' failure to carry out an effective investigation into his allegations of ill-treatment.

Violation of Article 3 (investigation)

Just satisfaction: EUR 4,000 (non-pecuniary damage) and EUR 4,200 (costs and expenses)

A. v. Switzerland (no. 60342/16)

The case concerned the deportation of an Iranian asylum-seeker.

The applicant, Mr A., was born in 1982 and grew up in Iran. He entered Switzerland in 2009 and immediately claimed asylum.

He brought three sets of asylum proceedings, all without success. He was questioned in person in the first two sets of proceedings, with the help of an interpreter. Initially he stated that he had been arrested and imprisoned in Iran for demonstrating against the presidential elections, but managed to escape and flee the country with the help of a smuggler. In the meantime an Iranian court had sentenced him in his absence to 36 months' imprisonment. The asylum authorities found that this account was not credible or sufficiently substantiated. His first application was thus rejected and he was ordered to leave Switzerland in 2013.

In his second application he submitted at a hearing that he would be at risk if returned to Iran because he had meanwhile converted from Islam to Christianity. The asylum authorities doubted, however, that his conversion was genuine and lasting and again rejected his application.

In 2014 the Federal administrative Court dismissed an appeal by Mr A. against that decision. It considered that Christian converts would only face a risk of ill-treatment upon return to Iran if they were particularly exposed in the public arena on account of their Christian faith and could therefore be perceived as a threat by the Iranian authorities. This was not the case for Mr A., who was an ordinary member of a Christian circle and the Iranian authorities had most likely not even become aware of his conversion.

In 2016, in a third round of proceedings, his application was again rejected, essentially on the same grounds.

The State Secretariat for Migration thus set a deadline for Mr A.'s voluntary departure in October of the same year. However, his deportation had in the meantime been stayed on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Swiss Government that he should not be deported to Iran for the duration of the proceedings before it.

Relying on Article 2 (right to life) and Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr A. alleged that his conversion to Christianity put him at a real risk of being killed or ill-treated if he were to be deported to Iran.

No violation of Article 2 or 3 – in the event of Mr A.'s deportation to Iran

Interim measure (Rule 39 of the Rules of Court) – not to expel Mr A.– still in force until judgment becomes final or until further order..

Kuveydar v. Turkey (no. 12047/05)

The applicant, Baykal Kuveydar, is a Turkish national who was born in 1973 and is currently serving a prison sentence of 20 years and ten months in Edirne (Turkey) for armed robbery, membership of a criminal organisation and illegally carrying weapons. The case concerned his allegation that he had been ill-treated in police custody following his arrest and that the ensuing criminal proceedings against him had been unfair.

In March 2001 Mr Kuveydar's house was searched in the context of an investigation into organised crime. The investigators found an unlicensed semi-automatic weapon in the house and Mr Kuveydar was immediately arrested. While in police custody he was examined on five separate occasions by different doctors. None of the medical reports indicated any trace of injury on his body. While in custody he admitted to the police that he had threatened a certain İ.Y. and his son in order to obtain money. When subsequently questioned before the Public Prosecutor he reiterated most of his previous statements to the police, but denied being a member of a criminal organisation or threatening İ.Y.

At trial, however, during the second hearing on his case in December 2001, Mr Kuveydar retracted the statements he had made to the police and the Public Prosecutor, alleging that he had been ill-treated in police custody. Just before the third and last hearing on his case in September 2002, he requested that two witnesses – one of whom was indicated in both the bill of indictment and the public prosecutor's written observations before the court – be heard in his defence. The Istanbul State Security Court rejected his request, finding that examining the witnesses called by Mr Kuveydar would have no effect on the outcome of the case. The court thus found him guilty as charged, based on an overall assessment of the evidence. The Court of Cassation upheld this judgment in April 2004.

Mr Kuveydar was not represented at any stage of the criminal proceedings against him.

Relying in particular on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) Mr Kuveydar alleged, inter alia, that the criminal proceedings against him had been unfair because of the refusal to hear any witnesses for the defence.

Violation of Article 6 §§ 1 and 3 (d)

Just satisfaction: EUR 1,500 (non-pecuniary damage)

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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.