



Judgments and decisions of 3 March 2016

The European Court of Human Rights has today notified in writing three judgments¹ and 42 decisions² :

two Chamber judgments are summarised below;

one Committee judgment, which concerns issues which have already been submitted to the Court, and the 42 decisions can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments below are available only in English.

Prade v. Germany (application no. 7215/10)

The applicant, Hans-Otto Prade, is a German national who was born in 1955 and lives in Hamburg. The case concerned his complaint that evidence found coincidentally during an unlawful house search had been admitted in criminal proceedings against him.

In September 2004, on request of the prosecutor's office, the Munich District Court issued a search warrant in respect of Mr Prade's home and the homes of three co-suspects on suspicion that they had committed "copyright piracy" by selling counterfeit goods such as watches and computer programmes. In December 2004 his flat was searched. The police did not find any of the items for which they were looking. Instead, by coincidence, they discovered a large amount of hashish, which was found to be enough for more than 2000 consumption units. Subsequently the criminal proceedings on suspicion of "copyright piracy" were discontinued, and new proceedings on suspicion of possession and trafficking of a substantial amount of drugs were opened against him.

Mr Prade lodged a complaint against the search warrant before the criminal courts, which was dismissed by the district court and the regional court. He then lodged a constitutional complaint, and in November 2005 the Federal Constitutional Court found that the search had been unlawful and quashed the search warrant. Having weighed the few indications supporting the suspicion that Mr Prade could have committed "copyright piracy" against the infringement of his constitutional right to respect for his home, the Constitutional Court considered that the search warrant and the house search had not been proportionate.

In January 2006 the Hamburg District Court convicted Mr Prade of possession of a substantial amount of drugs in less serious circumstances and sentenced him to ten months' imprisonment, suspended. The conviction was based exclusively on the hashish found during the house search. Mr Prade appealed, arguing that the evidence should not have been admitted as the search warrant had been invalidated by the Federal Constitutional Court's judgment of November 2005 and that the seizure of the hashish had not even been covered by the unlawful search warrant.

The appeal court quashed the district court's judgment and referred the case back, finding that the district court had not sufficiently examined whether the hashish found in Mr Prade's flat belonged to

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.

him, having regard in particular to the fact that he shared the flat with other people. In the resumed proceedings, Mr Prade made a statement to the effect that the room where the hashish had been found was being used exclusively by him. In April 2007 the Hamburg District Court acquitted Mr Prade, finding that the hashish found in the flat could not be used as evidence against him, given that the initial suspicion of “copyright piracy” had been so vague that the issuing of a search warrant had not been justified. The acquittal was subsequently quashed by the regional court, which again convicted him of the drug-related offence and sentenced him to six months’ imprisonment, suspended. The appeal court upheld the conviction, holding that in view of the seriousness of the crime the public interest in prosecution outweighed his interest in respect for his home because his rights had not been deliberately infringed, the house search had not been arbitrary and the amount of hashish found would theoretically have justified a house search.

On 2 July 2009, the Federal Constitutional Court dismissed a freshly lodged constitutional complaint by Mr Prade. It held in particular that the appeal court had balanced all the interests at stake in a way that was not arbitrary.

Relying in particular on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, Mr Prade complained that the evidence obtained in the execution of an invalid search warrant had been used in the proceedings against him.

No violation of Article 6 § 1

Kapustyak v. Ukraine (no. 26230/11)

The applicant, Petr Kapustyak, is a Ukrainian national who was born in 1982 and is currently detained in Gorodyshe prison (Ukraine). The case principally concerned his complaint of having been ill-treated by the police.

On 5 December 2008 Mr Kapustyak was apprehended by detectives from the Lviv Regional Police on suspicion of having been involved in a burglary a few days earlier, together with two suspects, during which one person had been stabbed to death and another person had been injured. According to Mr Kapustyak’s submissions, the detectives hit and kicked him after they had handcuffed him. Moreover, according to him, following his arrest he was ill-treated by the police in order to extract his confession. Questioned as a suspect by a police investigator on the following day, Mr Kapustyak admitted to having been involved in the burglary and to having hit one of the victims, but he denied having stabbed the other victim who had eventually died. In March 2010 Mr Kapustyak was convicted of murder, of aggravated burglary and of theft of documents, and sentenced to life imprisonment. The trial court relied in particular on the testimony of his co-defendants and other witnesses, along with other evidence. In January 2011 the Supreme Court upheld his conviction and reduced his sentence to 15 years’ imprisonment.

While the proceedings against him were pending, Mr Kapustyak complained to the authorities of his alleged ill-treatment during and following his arrest. The prosecutors took several decisions not to open criminal proceedings, which were overruled respectively and the case remitted for further examination. A decision to discontinue the investigation was eventually upheld in March 2014.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, Mr Kapustyak complained that he had been ill-treated by the police and that there had been no effective investigation into his complaint. Relying further on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), he complained that his trial had been unfair, as a number of witnesses whose questioning he had requested had not been summoned by the courts.

No violation of Article 3 (treatment)

Violation of Article 3 (investigation)

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

Just satisfaction: The applicant did not submit a claim for just satisfaction.

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Press contacts

echrpess@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.