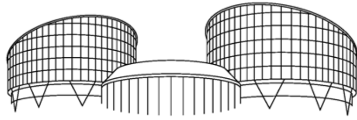

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 280 (2018)
28.08.2018

Judgments of 28 August 2018

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

seven Chamber judgments are summarised below;

separate press releases have been issued for five other Chamber judgments in the cases of *Somorjai v. Hungary* (application no. 60934/13), *Ibragim Ibragimov and Others v. Russia* (nos. 1413/08 and 28621/11), *Khodyukevich v. Russia* (no. 74282/11), *Savva Terentyev v. Russia* (no. 10692/09) and *Vizgirda v. Slovenia* (no. 59868/08).

The judgments summarized below are available in English only.

Seychell v. Malta (application no. 43328/14)

The applicant, Anthony Seychell, is a Maltese national who was born in 1961 and is detained at the Corradino Correctional Facility (Paola, Malta).

The case concerned Mr Seychell's complaint about the discretion of the Attorney General to decide in which court to try someone accused of drugs offences, which had an impact on which punishment bracket would apply.

The applicant was arrested in 2004 and tried in 2008 for the cultivation and possession of cannabis which was not for his sole use. He was tried in the Criminal Court and he was sentenced to 12 years' imprisonment and a fine of 25,000 euros, which was confirmed on appeal in March 2009.

In November 2010 he filed a constitutional complaint under Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights about, among other things, the discretion of the Attorney General as public prosecutor to decide in which court to try an accused. Following the Strasbourg Court's judgment in *Camilleri v. Malta* of January 2013, which found a violation owing to that discretion, the applicant asked to add a complaint under Article 7 (no punishment without law) of the Convention to his earlier application.

In February and March 2013 the Civil Court (First Hall) in its constitutional competence first rejected his application to add a complaint under Article 7 and then rejected his other claims, also considering that it was not necessary to determine the complaint concerning the Attorney General's discretion under Article 6. The Constitutional Court rejected an appeal by the applicant in December 2013.

Relying on Article 7, the applicant complained about the Attorney General's discretion to determine the trial court, which could lead to heavier penalties for the accused if the trial took place in the Criminal Court.

Violation of Article 7

Just satisfaction: 1,000 euros (EUR) (non-pecuniary damage) and EUR 1,700 (costs and expenses)

[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

Cabral v. the Netherlands (no. 37617/10)

The applicant, Euclides Cabral, is a Netherlands national who was born in 1987 and lives in Rotterdam (the Netherlands).

The case concerned the applicant's complaint that he had been tried and convicted of a supermarket robbery without being able to examine a key witness.

Mr Cabral was convicted in August 2006 of, among other crimes, a supermarket hold-up. A key piece of evidence for the conviction was the testimony of an accomplice, which had also incriminated Mr Cabral. The accomplice later withdrew his statement, but was not believed by the court.

Relying on his own privilege against self-incrimination, the accomplice refused to answer any questions put by the defence in the appeal proceedings, which ended in March 2008 by upholding the first-instance judgment. The Supreme Court dismissed an appeal on points of law by the applicant in January 2010.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Cabral complained that he had been convicted "solely or to a decisive extent" on the basis of statements made to the police by a witness who had been allowed to refuse to give evidence under cross-examination by the defence.

Violation of Article 6 §§ 1 and 3 (d)

Just satisfaction: The Court held that the finding of a violation constitued in itself sufficient just satisfaction for any non-pecuniary damage sustained by Mr Cabral. It awarded him EUR 94 for costs and expenses.

Revision

Dickmann and Gion v. Romania (nos. 10346/03 and 10893/04)

The case concerned a request for revision of a 2017 judgment by the European Court of Human Rights with regard to legislation on property restitution in Romania after the fall of the communist regime.

The applicant in the first case is Dora Dickmann, an Israeli and Romanian national, who was born in 1932 and died in 2003. The proceedings were continued by her husband, Jean Dickmann, who lived in Tel Aviv (Israel). The applicants in the second case are Mariana Gion, a Romanian and German national, born in 1943 and living in Essen, Germany, and her husband Helmut-Ion Gion, a German national, who was born in 1941 and died in 2004. The proceedings have been continued by his heirs, Mariana Gion and Nicolette Monica Gion.

In its judgment of 24 October 2017, the Court held that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights on account of the applicants' inability to obtain restitution of their nationalised properties or to secure compensation. The Court made awards of just satisfaction to the applicants.

However, the Government informed the Court in March 2018 that they had learned that Mr Dickmann, who had pursued the application of his deceased wife, had himself died in March 2016. They accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court in so far as the just satisfaction awards were concerned, as they had been unable to enforce that part of the judgment as Mr Dickmann had died before it had been adopted.

In today's judgment the Court decided to revise its judgment of 24 October 2017 insofar as it concerns the application of Article 41 (just satisfaction) of the Convention in respect of application no. 10346/03 and to dismiss the claims for just satisfaction in respect of that application.

Alikhanovy v. Russia (no. 17054/06)

The applicants, Ibragim Alikhanov, Muslimat Alikhanova, and Tamara Alikhanova, are Russian nationals who were born in 1930, 1936, and 1976 respectively and live in the villages of Ruguzh and Gurik, in the Republic of Dagestan, Russia. The case concerned their allegation that their son and husband, Amirkhan Alikhanov, born in 1974, had been abducted at a police checkpoint and subsequently killed.

On approaching the checkpoint on 23 December 2004 Amirkhan Alikhanov telephoned his brother to say he was on his way. However, he never arrived. His brother received a call during the night requesting a ransom, which he informed the law-enforcement authorities about the next day.

The brother also went early the following day to the checkpoint and was told by police officers that Mr Alikhanov had been stopped by officers from the Dagestan Organised Crime Unit, forced into one of their vehicles and taken in the direction of Makhachkala, the capital of Dagestan.

The prosecuting authorities opened an investigation shortly afterwards and questioned the brother and other relatives. In the following weeks and months they also questioned traffic police officers on duty at the checkpoint during the abduction and police officers from the Organised Crime Unit, who all denied knowing anything about the matter.

In the meantime, at the end of March or early April, the applicant family had learned of the discovery of six bodies in a forest near Zamay-Yurt (in the Chechen Republic), allegedly shot by federal forces during a special operation. The applicants had gone there and recovered clothes belonging to their relative which they then gave to the authorities. However, a forensic expert examination was inconclusive as there was not enough DNA on the clothing. The family made a request to the authorities to exhume the bodies for a post-mortem, but received no response.

The investigation has been suspended and resumed on a number of occasions and is currently still ongoing, without having identified those responsible.

The Government argued that the investigators had not found evidence to prove that law-enforcement officers were involved in the abduction and presumed death of the applicants' relative, and, in any case, his body had never been found.

Relying on Article 2 (right to life) and Article 5 (right to liberty and security), the applicants alleged in particular that Russian law-enforcement officers had abducted and killed their relative and that the authorities' investigation into their allegations had been ineffective. Under Article 3 (prohibition of inhuman or degrading treatment), they alleged profound mental suffering because of the abduction, killing and failure to carry out a proper investigation. Lastly, they alleged that there had been no effective remedies at national level for their complaints under Article 13 (right to an effective remedy), in conjunction with in particular Articles 2 and 3.

Violation of Article 2 (right to life) – in respect of Amirkhan Alikhanov
Violation of Article 2 (investigation) – in respect of the failure to investigate the abduction and death of Amirkhan Alikhanov
Violation of Article 3 (inhuman and degrading treatment) – in respect of the applicants, on account of their mental suffering
Violation of Article 5 – in respect of Amirkhan Alikhanov
Violation of Article 13 in conjunction with Articles 2 and 3

Just satisfaction: EUR 20,000 to each application for non-pecuniary damage

Vyacheslav Korchagin v. Russia (no. 12307/16)

The applicant, Vyacheslav Viktorovich Korchagin, is a Russian national who was born in 1977 and lives in Liski (Voronezh Region, Russia). The case concerned his allegation that he had not notified of administrative offence proceedings brought against him.

Mr Korchagin started a business in 2009 which he extended to running food stands in 2013. After an inspection in 2014, an official from the consumer protection authorities informed him on his mobile telephone that administrative offence proceedings would be brought against him for not complying with regulations on stored food products. He was acquitted at first instance, but was found guilty on appeal in 2015 and given a fine.

He applied for a cassation review of the appeal decision, arguing that he had not been notified of the trial and appeal hearings, either via post at his actual residence or by telephone. However, the cassation court upheld the appeal decision, concluding that he had been notified by mail at one of the addresses where he had registered his business, but had avoided being served with the court notifications. Therefore he must have been aware of the time and place of the appeal hearing. He could also have kept track of the progress of his case via official sources such as the appeal court's website. He lodged a cassation appeal before the Supreme Court of Russia, without success.

Relying on Article 6 § 1 (right to a fair trial), Mr Korchagin alleges that the proceedings against him had been unfair because he had not notified of hearings in his case, either before the first-instance court or on appeal.

No violation of Article 6 § 1

Grujić v. Serbia (no. 203/07)

The applicant, Boško Grujić, is a Serbian national who was born in 1963 and lives in Nova Pazova (Serbia).

The case concerned the applicant's efforts to enforce court orders for contact with his two children.

Mr Grujić lived with his two children, a daughter and son, and their mother until 2001, when the parents separated. In January of that year the local social care centre gave custody of the children to the mother and allowed Mr Grujić to have visits every other weekend and during school holidays.

In August 2005 he applied to a court for sole custody and in December 2005 the court issued an interim contact order, which was similar to the old one and which was to be in place for the duration of the custody proceedings. Those proceedings were ended by the court in September 2008, a decision that was upheld by the district court in December of the same year.

From January 2006 Mr Grujić tried to enforce the interim contact order of December 2005. He met various hurdles, including the fact that his daughter would not go with him for meetings and the mother refusing to allow the son to go on his own on those occasions.

The social services and courts arranged various meetings between the parents and the father and the children to discuss the situation, and bailiffs always attended when the father tried to enforce his contact rights. Ultimately, the first-instance court dealing with the case terminated the interim enforcement proceedings in November 2011 and Mr Grujić was ordered to pay costs. That decision was confirmed by another court in December 2015, which was upheld on appeal in December 2016.

Mr Grujić complained that the Serbian authorities had failed to take effective steps to enforce the interim contact order of December 2005. The Court considered the complaint under Article 8 (right to respect for private and family life).

No violation of Article 8

S.J.P. and E.S. v. Sweden (no. 8610/11)

The applicants, Ms S.J.P., a Swedish national, and Mr E.S., an Iranian national, were born in 1969 and 1964 respectively and live in Sandnes (Norway).

The case concerned the applicants' complaint about their children, A, B and C, being taken into care and the limits placed on their contact with them.

After C's birth in February 2007, staff at the neo-natal unit in Linköping in Sweden, where the baby was being treated, contacted the local social services to express their concern about the mother's ability to look after the child. They also expressed worries about the situation of the rest of the family, reporting that A and B had been noisy and unruly during a visit and that the first applicant had been aggressive when staff had mentioned they would contact social services.

Ultimately, the social services decided in September 2007 to take the children into care. However, the care order was cancelled as the family had in the meantime gone to Iran, staying there until October 2008, when they moved to Norway.

In May 2009 the Norwegian authorities began an investigation into the family after A reported that he and B had been beaten by their father. The family disappeared, the Norwegian authorities contacted their Swedish counterparts and the family were stopped at Stockholm Airport on their way to Iran. The children were taken into care, a decision that was subsequently upheld by the Administrative Court of Appeal in December 2009. In April 2011 that court also upheld earlier decisions to keep the children in care.

The courts also placed restrictions on the applicants' access to the children, who were placed in foster homes. At the outset, there was a total prohibition on contact but this was eventually lifted and the latest order, issued in April 2015, allowed them contact rights of six hours every other month.

Relying on Article 8 (right to respect for private and family life), the applicants complained about the authorities' decisions to place their children in care and keep them there and about the restrictions on their contact rights.

No violation of Article 8 – in respect of the public care
No violation of Article 8 – in respect of the contact rights

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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.