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

Press Release
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ECHR 267 (2014)
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Judgments concerning Hungary, Latvia, Romania, Switzerland and Turkey

The European Court of Human Rights has today notified in writing the following 13 judgments, of which seven (in italics) are Committee judgments and are final. The others are Chamber judgments[1] and are not final.

Repetitive cases[2], with the Court's main finding indicated, can be found at the end of the press release. The judgments in French are indicated with an asterisk (*).

The Court has also delivered today a judgment in the case of Valle Pierimpiè Società Agricola S.p.a. v. Italy (no. 46154/11), for which a separate press release has been issued.

O.G. v. Latvia (application no. 66095/09)

The applicant, Mr O.G., is a Latvian national who was born in 1965 and lives in Riga. The case concerned his allegation that his confinement in a psychiatric hospital had been illegal.

In August 2008, in the context of criminal proceedings brought against the applicant for fraud, a court ordered his inpatient treatment in a psychiatric hospital. The court considered in particular that the applicant, suffering from chronic paranoid schizophrenia, posed a danger to society. The applicant lodged an appeal which was not examined on the ground that he did not have standing to appeal and his legal representative, a psychiatrist responsible for his medical treatment, who had been appointed in another set of criminal proceedings brought against him in 2004 for Internet fraud, had not appealed the decision to have him interned. As a result, on 22 October 2009 police officers took the applicant from his flat to a psychiatric hospital in Riga. He was released from hospital on 7 June 2010 following a decision ordering his treatment as an outpatient.

Relying on Article 5 §§ 1 and 4 (right to liberty and security and to have lawfulness of detention decided speedily by a court) of the European Convention on Human Rights, the applicant complained that his involuntary admission to a psychiatric hospital had not been justified and that he had not been able to challenge the lawfulness of his detention.

Violation of Article 5 § 4
Violation of Article 5 § 1

Just satisfaction: EUR 10,000 euros (EUR) (non-pecuniary damage) and EUR 50 (respect of costs and expenses)

Hietsch v. Romania (no. 32015/07)*

The applicant, Ms Maria Dorina Rodica Hietsch, is a Romanian national who was born in 1942 and lives in Sighişoara. The case concerned the right of access to a court.

In 2005 Ms Hietsch requested the District Court to annul the sale of several plots of land that had been agreed between her brother and some third parties, arguing that the sale infringed her

[1] Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a 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] In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

inheritance rights. The court rejected the request. Ms Hietsch lodged an appeal, which was dismissed by the County Court on the ground that she had not paid the stamp duty within the statutory time-limit.

Relying on Article 6 § 1 (right to a fair trial), Ms Hietsch alleged a violation of her right of access to a court on account of the striking-out of her appeal.

Violation of Article 6 § 1

Just satisfaction: The Court rejected the applicant's claim for just satisfaction.

S.B. v. Romania (no. 24453/04)

The applicant, Ms S.B., is a Romanian national who was born in 1952 and lives in Bucharest. The case concerned alleged medical negligence for dental treatment.

In September 2001 the applicant underwent dental treatment involving bridgework, which she alleges was not correctly carried out by the dentist given the various problems (infected gums, cuts and pain) it caused her. In March 2003 she lodged a criminal complaint, requesting a detailed medical expert report which would establish whether there had been medical negligence in her case and seeking compensation. An expert report was carried out and issued in December 2003 recommending the removal of the prosthetic dental work as it had been inadequately carried out by the dentist. Ultimately, however, in March 2011, the Bucharest District Court acquitted the dentist of medical negligence, concluding that the applicant was at fault as she had refused to have the dental prosthetics fixed permanently. This decision was subsequently upheld on appeal in October 2011.

Relying in particular on Article 8 (right to respect for private and family life), the applicant notably complained about the lack of opportunity to establish whether the dental treatment she had undergone had constituted medical negligence and to obtain appropriate redress. She submitted in particular that it had been impossible in Romania in cases of medical negligence to obtain a medical expert report without first having lodged a civil or criminal complaint.

Violation of Article 8

Just satisfaction: EUR 25,000 (all heads of damage), and EUR 850 (costs and expenses)

C.W. v. Switzerland (no. 67725/10)*

The case concerned the procedure governing the continued detention of a person of unsound mind.

The applicant, C.W., is a Swiss national who was born in 1963 and lives in Rheinau (Switzerland).

In 1989 C.W. was diagnosed with paranoid schizophrenia. In 1994 and 1999 he inflicted serious injuries on his mother with a hammer and an axe. After attacking a police officer in 2001 he was placed in an institution specialising in the treatment of offenders with psychiatric problems. In September 2001 he was sentenced to five years' imprisonment. The sentence was suspended subject to an "in-patient treatment order" issued on the basis of psychiatric expert reports. In May 2007, when the duration of the treatment order expired, the authorities refused C.W.'s application for conditional release and sought the extension of the order for a further five years. The applicant requested a two-year extension. In July 2012 his detention was extended again, this time by three years.

Relying on Article 5 § 1 (right to liberty and security), the applicant alleged that his detention in the Rheinau centre had not had a valid legal basis, that the extension of the in-patient treatment order for five years had not been justified and that the decision in question had breached the principle of

proportionality and had been arbitrary, since it had been ordered in the absence of an independent expert report enabling his dangerousness to be reviewed.

No violation of Article 5 § 1

Atiman v. Turkey (no. 62279/09)

The applicant, Hamdi Atiman, is a Turkish national who was born in 1974 and lives in Van (Turkey). The case concerned his complaint about excessive use of force by the security forces.

In the early hours of 25 June 2008 gendarme officers, who had blocked a road near the village of Armutdüzü following intelligence that terrorists were hiding in the area, tried to stop the lorry in which Mr Atiman was travelling on the suspicion that he was smuggling fuel. The gendarmes opened fire on the lorry when it did not stop and Mr Atiman was shot and wounded in the hip.

A criminal investigation launched into the incident resulted in April 2009 in a decision not to prosecute. The prosecuting authorities concluded that the gendarmes had had to resort to the use of force as the driver of the lorry had disobeyed an order to stop and that the gendarmes had fired warning shots in the air before shooting at the tyres of the lorry.

Relying on Article 2 (right to life), Mr Atiman alleged that the use of force against him had not been absolutely necessary and that the ensuing criminal investigation into the incident had been flawed and ineffective. As concerned the investigation, Mr Atiman alleged in particular that the prosecuting authorities had dismissed without further examination both his submission that the lorry, travelling down a steep hill at high speed, had not been able to stop due to brake failure as well as two witness statements confirming that he had shouted to the gendarmes from the window that he had been unable to stop.

Violation of Article 2 (right to life + investigation)

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

Cevat Soysal v. Turkey (no. 17362/03)

The applicant, Cevat Soysal, is a Turkish national who was born in 1962 and lives in Germany. The case concerned his complaint about the unfairness of the criminal proceedings brought against him for membership of the PKK, an illegal organisation.

In July 1999 Mr Soysal was captured in Chisinau (Moldova) and taken to Turkey for trial. Shortly after his arrival, a number of news articles referred to him as a "terrorist", "a traitor to the country", the "second man of the PKK" and the "European representative of the PKK". He was convicted of membership of the PKK and sentenced to 18 years and nine months' imprisonment in June 2002. The conviction was based to a decisive extent on transcripts of Mr Soysal's tapped telephone conversations, during which he had allegedly issued instructions to members of the PKK to perpetrate acts of violence in Turkey, as well as a number of witness statements made to the police by Abdullah Öcalan (the leader of the PKK) and persons accused of membership of the PKK. Mr Soysal's conviction was upheld on appeal in December 2002. He was released from prison on probation in November 2008 and went to Germany, where his family were living.

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 Soysal alleged that the criminal proceedings against him had been unfair for a number of reasons including: first, because his conviction had been based on the use of unlawfully obtained evidence (namely phone tapping which had not been authorised by a court order); second, because the courts had refused to provide him with a copy of the audiotapes with the alleged telephone conversations; and, third, because, despite his repeated requests, the courts

had refused to call those persons, including Abdullah Öcalan, who had made witness statements against him to testify before the trial court.

Violation of Article 6 § 1
Violation of Article 6 § 1 taken together with Article 6 § 3 (d)

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 2,500 (costs and expenses)

Mahmut Sezer v. Turkey (no. 43545/09)*

The applicant, Mahmut Sezer, is a Turkish national who was born in 1923 and lives in Zeytinburnu.

In February 1977 Mr Sezer acquired a plot of building land in Istanbul with a surface area of 338 sq. m. All his applications for planning permission were rejected on the ground that the land had been designated as a "green area" in the development plan of 3 February 1982.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), Mr Sezer complained that he had not had the full enjoyment of his property.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 10,000 (non-pecuniary damage). The Court further held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision as far as pecuniary damage was concerned and reserved it for examination at a later date.

Repetitive cases

The following cases raised issues which had already been submitted to the Court.

Á.A. v. Hungary (no. 22193/11)
P.G. v. Hungary (no. 18229/11)

In these two cases the applicants, both former employees of State-owned financial institutions, complained that part of their severance pay had been taxed at a rate of 98%. They relied in particular on Article 1 of Protocol No. 1 (protection of property).

Violation of Article 1 of Protocol No. 1 – in both cases

Gajcsi v. Hungary (no. 62924/10)

In this case the applicant complained about his automatic disenfranchisement because he suffered from a psycho-social disability. He relied on Article 3 of Protocol No. 1 (right to free elections).

Violation of Article 3 of Protocol No. 1

Horváth and Vajnai v. Hungary (nos. 55795/11 and 55798/11)
Noé, Vajnai and Bakó v. Hungary (nos. 24515/09, 24539/09, and 24611/09)
Vajnai v. Hungary (no. 6061/10)

The applicants in these three cases, members of the Hungarian Workers' Party (*Munkáspárt*), complained about their convictions, or the police measures taken against them, for wearing or displaying in public totalitarian symbols, such as the five-pointed red star and/or the sickle-and-hammer logo. They relied on Article 10 (freedom of expression).

Violation of Article 10 – in all three cases

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