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

Press Release
issued by the Registrar of the Court

ECHR 060 (2016)
16.02.2016

Judgments of 16 February 2016

The European Court of Human Rights has today notified in writing 11 judgments[1]:

ten Chamber judgments are listed below; for one other, in the case of *Soares de Melo v. Portugal* (application no. 72850/14), a separate press release has been issued.

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

Ärztekammer Für Wien and Dorner v. Austria (application no. 8895/10)

The applicants in this case are the Vienna Chamber of Medical Doctors (*Ärztekammer für Wien*) and Walter Dorner, who was the Chamber's president at the time of the events. The case concerned their complaint about decisions by the domestic courts prohibiting them from making certain negative statements about a private company.

In January 2007 Mr Dorner published a letter on the Chamber's website, which was also sent to all members of the Chamber, in which he referred to reports that a private company, F., was planning to provide radiology services. He warned of the risk that doctors might become mere employees of "locust" companies such as F. and announced that the Chamber would make use of all legal and political means available to stop such a disastrous development. Following a complaint by the company F., the Vienna Commercial Court issued an injunction, in February 2007, prohibiting the applicants from repeating the statement that the company was ruthless towards third parties, in particular medical professionals, from referring to the company as a "locust" company or fund, and from stating that the provision of radiology services by the company was a disastrous development. The appeal court amended the injunction in that the applicants were no longer prohibited from referring to F. providing of medical services as a disastrous development. The lower courts' decisions were upheld by the Supreme Court.

In the main proceedings the Vienna Commercial Court, in July 2008, confirmed the prohibitions. Furthermore, the applicants were ordered to publish the operative part of the judgment on the Chamber's website, where it was to be displayed for 30 days, and in the Chamber's printed newsletter. The judgment was eventually upheld in July 2009. The courts found that while the statements in question did not constitute defamation pursuant to the Civil Code, they had been made in a commercial context and not in the Chamber's capacity as an official authority – the Chamber and the company F. being competitors – and had been in violation of the Unfair Competition Act. The term "locust" had a negative meaning, leading to the unethical general vilification of a competitor.

The applicants complained that the domestic courts' decisions had violated their rights under Article 10 (freedom of expression) of the European Convention on Human Rights.

No violation of Article 10 – in respect of M. Dorner (the Court further declared the Vienna Chamber of Medical Doctors' application inadmissible)

[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

Govedarski v. Bulgaria (no. 34957/12)*

The applicants, Milko Serafimov Govedarski, his wife Svetlana Slavcheva Taneva-Govedarska and their children, S.G. and M.G., are Bulgarian nationals who were born in 1970, 1972, 2003 and 2007 respectively. They live in Rakovski.

The case concerns a police operation carried out at Mr Govedarski's home and its effects on him and his family.

The Plovdiv Economic Crime Prevention Department opened a preliminary investigation in respect of Mr Govedarski on suspicion of lending money to individuals in exchange for payment. On 18 November 2001 the Plovdiv Deputy Chief of Police and the regional prosecutor approved plans for a police operation at Mr Govedarski's home. On the morning of 21 November 2011 several masked and heavily armed police officers entered Mr Govedarski's house and burst into the bedrooms while he and his family were asleep. According to Mr Govedarski, the police officers surrounded him and threatened him in an attempt to make him confess to usury; he stood in front of them in his underpants for more than an hour, before being handcuffed and taken outside. Mr Govedarski was placed in pre-trial detention later that day and charged with illegal pursuit of a financial activity. The search of Mr Govedarski's home was approved by a judge that afternoon. He was released on bail on 24 November 2011, and on 22 March 2012 the public prosecutor ruled that there was no case to answer, discontinuing the criminal proceedings.

Since the police operation, Mr Govedarski and his wife and children have complained of various forms of psychological trauma. Mr Govedarski also states that his reputation has been damaged and that his business has suffered losses because the events were reported in the regional press and his financial partners distanced themselves from him.

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life) and 13 (right to an effective remedy), Mr Govedarski and his wife and children complain that they have suffered psychological trauma as a result of the police operation at their home, the search of their house, the seizure of various documents and the lack of domestic remedies in respect of the alleged violations of their rights.

Violation of Article 3 (degrading treatment)
Violation of Article 8
Violation of Article 13 in conjunction with Articles 3 and 8

Just satisfaction: 30,000 euros (EUR) to the applicants jointly in respect of non-pecuniary damage, and EUR 4,000 jointly in respect of costs and expenses

Vijatović v. Croatia (no. 50200/13)

The applicant, Vera Vijatović, is a Croatian national who was born in 1927 and lives in Zagreb. The case concerned her complaint about the authorities' refusal of her request to purchase a flat that she had occupied.

In 1995 the Act Amending the Sale to Occupier Act allowed the sale of State-owned flats. The time-limit for lodging a request to purchase such a flat was set at 60 days from the date on which this Act came into force, that is 17 August 1995. This time-limit was subsequently abrogated by the Constitutional Court, which noted that new time-limits could be fixed not only by the legislature but also by the Croatian Government.

Ms Vijatović, by virtue of her husband, was the holder of a specially protected tenancy of a flat in Zagreb. Her husband had been granted the tenancy in 1961 by the Yugoslav People's Army. In June 2006 she lodged a request to purchase the flat with the Ministry of Defence. Her request was denied on the ground that it had been lodged outside the time-limit, namely 31 December 1995.

Ms Vijatović then lodged a civil claim with the national courts, relying on several decisions by the Constitutional Court that there was no time-limit for requests such as hers. The Municipal Court dismissed her claim on the ground that she had lodged her request outside the accepted time-limit. This judgment was upheld on appeal in October 2010. Her subsequent constitutional complaint was dismissed in February 2013, on the ground that she had not justified why she had lodged her request outside the established time-limit.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), Ms Vijatović complained of a violation of her property rights, arguing in particular that in other similar cases the Constitutional Court had found a violation of the Constitution on the ground that there had been no time-limit for lodging such a request; the only departure from such a view had been in her case.

Violation of Article 1 of Protocol No. 1

Just satisfaction: The Court reserved, for decision at a later date, the question of the application of Article 41 (just satisfaction) of the Convention.

Caracet v. the Republic of Moldova (no. 16031/10)*

The applicant, Ion Caracet, is a Moldovan national who was born in 1988 and is currently in detention in Cahul.

The case concerned allegations of ill-treatment inflicted on him during his arrest and detention, and the lack of an effective investigation into those allegations.

On 13 March 2009 Mr Caracet was arrested with five other people on suspicion of armed robbery. According to his version of events, the police officers repeatedly beat him during his arrest and at the police station in an attempt to extract a confession, and he was later subjected to further ill-treatment while in pre-trial detention, for example being hit with plastic bottles filled with water so that no visible traces would be left on his body. On 18 March 2009 a forensic medical expert observed bruising on the applicant's upper right eyelid and skin abrasions around the nose and left knee. A second medical report, issued on 9 April 2009, did not note any visible bodily injuries.

Mr Caracet lodged two criminal complaints in relation to his allegations of ill-treatment. The first, lodged on 16 March 2009, resulted in a decision to take no further action, which was upheld by a superior prosecutor. Mr Caracet appealed, but the investigating judge at the Buiucani Court of First Instance dismissed his appeal in a final decision. His second complaint, lodged on 2 April 2009, gave rise to a decision by the Prosecutor General's Office to take no further action, which was upheld by the investigating judge at the Buiucani Court of First Instance in a final decision.

In the meantime, on 16 March 2009, Mr Caracet had been placed in pre-trial detention for an initial period of ten days, which was extended for the duration of the investigation and the subsequent trial. The courts justified their decisions by referring to the seriousness of the charge, the complexity of the case and the risks of his absconding, obstructing the course of justice, reoffending and disturbing public order if released. Mr Caracet appealed against those decisions, but his appeals were dismissed by the Court of Appeal. Following the trial, Mr Caracet was found guilty by the Cahul Court of Appeal on 19 March 2013 and sentenced to ten years' imprisonment.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Caracet complained that he had been ill-treated during his arrest and pre-trial detention, and that no effective investigation had been carried out into those allegations.

Violation of Article 3 (treatment + investigation)
Violation of Article 5 § 3

Just satisfaction: EUR 12,000 (non-pecuniary damage) and EUR 1,160 (costs and expenses)

Paluch v. Poland (no. 57292/12)
Świderski v. Poland (no. 5532/10)

The cases concerned the regime in Polish prisons for detainees who are classified as dangerous.

The applicant in the first case, Jakub Paluch, is a Polish national who was born in 1989 and is currently in detention in Lublin (Poland) following his conviction for assault and endangering lives through arson and extortion.

The applicant in the second case, Jakub Świderski, is a Polish national who was born in 1989 and is detained in in Opole Lubelskie (Poland). He was arrested and remanded in custody in June 2007 on suspicion of murder. He was ultimately convicted in May 2014 and sentenced to 13 years' imprisonment.

Both applicants have been classified as dangerous prisoners during their detention. Mr Paluch was placed under the regime in October 2011 for organising a hunger strike and planning an attack on a prison employee. This measure was reviewed and extended by a penitentiary commission on a number of occasions until it was lifted in July 2012 on the basis that Mr Paluch no longer posed a danger to the prison. Mr Świderski was placed under the regime from August 2007 to September 2011 in various remand centres on account of his aggressive and vulgar behaviour and the fact that he had attempted to escape while being transported outside of the prison in 2007. His numerous appeals were rejected until such time as the measure was lifted in September 2011 for good behaviour.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), both applicants complained about the special high-security measures to which they had been subjected during their classification as dangerous detainees, namely their solitary confinement, their isolation from their families, the outside world and other detainees, their shackling (handcuffs and fetters joined together with chains) whenever they were taken out of their cells, the routine daily strip searches and constant monitoring of their cells and sanitary facilities via closed-circuit television.

Violation of Article 3 – in respect of both Mr Paluch and Mr Świderski

Just satisfaction: EUR 3,500 to Mr Paluch and EUR 9,000 to Mr Świderski in respect of non-pecuniary damage

Dalakov v. Russia (no. 35152/09)

The applicant, Magomed Dalakov, is a Russian national who was born in 1933 and lives in Karabulak (Ingushetia, Russia). The case concerned his allegation that his nephew had been killed by the Russian security services during a special operation in Ingushetia.

The applicant alleged that a group of men had opened fire on his nephew, Apti Dalakov, on 2 September 2007 when he was walking down the street in Karabulak. The men, some in plain clothes and others in camouflage uniforms, were officers of the Ingushetia Federal Security Service and were armed with assault rifles and pistols. Apti Dalakov apparently ran away and was given chase by the security officers. According to a number of local residents Apti Dalakov was then hit by a car, whose driver ran after him and fired at him several times. Several other officers ran towards the scene and also fired at Apti Dalakov who had fallen to the ground. The police, who had in the meantime been alerted, arrived and arrested the officers following a scuffle with them. Bomb disposal experts were called to the scene to deactivate a grenade which, according to the eyewitnesses, had been placed under Apti Dalakov's body by the officers once they had ascertained that their victim was dead.

According to the Government's submissions, the Ingushetia security officers had attempted to apprehend Apti Dalakov, a presumed member of a bandit group, on 2 September 2007, and had had

to use lethal force against him as, despite a warning that they would open fire, he had not stopped running away and had taken a grenade from his pocket and pulled the pin.

Criminal proceedings were immediately brought against Apti Dalakov for assault of a law-enforcement official and unlawful possession of arms and explosives. The crime scene was examined, the ensuing report establishing that 40 shots were fired during the special operation and that a grenade was found under Apti Dalakov's body. A forensic expert examination was also carried out which reported that Apti Dalakov had sustained four bullet wounds in his back and the back of his head. The investigation was terminated on three occasions because of the death of the suspect, in November 2007, then in January and February 2008. In January 2008 the military investigations department also refused to initiate an investigation into the use of lethal force against Apti Dalakov due to lack of evidence that the officers had committed a crime. The applicant was not informed of any of those decisions.

No criminal investigation has apparently ever officially been carried out in connection with the death of Apti Dalakov, despite the applicant's attempts to initiate such proceedings. He notably stressed in his complaint to the prosecuting authorities that, according to numerous witnesses (who had never been interviewed), his nephew had not been armed and had not put up any resistance. In September 2008 the domestic courts examined and rejected his complaint as unsubstantiated, finding that the criminal case concerning Apti Dalakov's death had been terminated on the basis that the officers carrying out the special operation in question had acted lawfully. The applicant submits that neither he nor his lawyer have ever been informed of this decision.

Relying in particular on Article 2 (right to life), the applicant complained about the killing of his nephew by security officers and the failure of the domestic authorities to investigate.

Violation of Article 2 (investigation)
Violation of Article 2 (right to life)

Just satisfaction: EUR 60,000 (non-pecuniary damage) and EUR 3,500 (costs and expenses)

Yevdokimov and Others v. Russia (nos. 27236/05, 44223/05, 53304/07, 40232/11, 60052/11, 76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12)

The case concerned the absence of detainee litigants from civil proceedings in Russia.

The applicants are 11 Russian nationals, who at the relevant time were all detained in Russian penal facilities. While in detention, three of the applicants lodged defamation claims against third parties; seven of the applicants brought claims seeking compensation for alleged inhuman conditions of detention; and, the remaining applicant lodged a civil claim for compensation, alleging that criminal proceedings had been instituted unlawfully. None of the applicants were able to attend the hearings at which their claims were examined. The domestic courts refused them this possibility at two levels of jurisdiction on the ground that there was no domestic legal provision making it mandatory to ensure detainees' presence at court.

Relying on Article 6 § 1 (right to a fair hearing), the applicants complained in particular that their right to a fair hearing had been breached on account of the domestic courts' refusal of their requests to appear in court.

Violation of Article 6 § 1

Just satisfaction: EUR 1,000 to Aleksandr Morozov and EUR 1,500 EUR each to the ten other applicants in respect of non-pecuniary damage; and EUR 850 each to Aleksandr Morozov, Andrey Resin and Yuriy Vinokhodov, and EUR 10 to Yuriy Lebetskiy in respect of costs and expenses

Révision

Borovská and Forrai v. Slovakia (no. 48554/10)

The applicants, Mária Borovská, Mária Buzová, and Štefan Forrai, Slovak nationals, were born in 1948, 1937, and 1927 respectively. They all lived or live in Košice (Slovakia). Ms Buzová and Mr Forrai died in October 2013 and October 2014 respectively.

The case now concerned a request for revision of judgment of the European Court of Human Rights of 25 November 2014 in which it ruled on the admissibility and merits of the application. As for the substance, the case concerned land in the area of Košice-Sever (Slovakia) which had been expropriated in the 1980s by the then socialist State in order to build a sports complex.

The applicants were all the successors in title to the former owners of the land in Košice-Sever on which the sports complex was built. Claiming that they were the owners of the land, the applicants sought an arrangement of their relationship with the owners of the complex. Their claims were however dismissed at second instance in February 2010 on the grounds that they had no standing to sue under the general civil law. The applicants' complaints to the Constitutional Court, alleging that the judgment in their case was inconsistent with the outcomes in a number of other cases similar to theirs, were declared inadmissible in June 2010.

In its principal judgment of 25 November 2014 the Court found a violation of Article 6 § 1 (right to a fair hearing) on account of the inconsistency of the national courts' decision-making in relation to their property claims, in particular the courts' failure to respond to the applicants' argument that a number of generically similar claims concerning other plots of land on which the sports complex had been built had been granted. The Court awarded 5,200 euros (EUR) each to Ms Borovská and Mr Forrai in respect of non-pecuniary damage and EUR 1,200 to them jointly for costs and expenses. Ms Buzová's part of the application was struck out of the Court's list of cases.

The Government now requested revision of the judgment of 25 November 2014, which had not yet been enforced because Štefan Forrai had died before the judgment was adopted.

The Court decided to revise its judgment of 25 November 2014 and to strike the application out of its list of cases in so far as brought by Štefan Forrai. It further held that Slovakia was to pay to Mária Borovská EUR 5,200 in respect of non-pecuniary damage and EUR 1,200 in respect of costs and expenses.

Vlieeland Boddy and Marcelo Lanni v. Spain (nos. 53465/11 and 9634/12)*

The applicants, Clive Marshall Vlieeland Boddy and Claudio Marcelo Lanni, are nationals of the United Kingdom and Argentina respectively.

The case concerned the Spanish courts' rejection of compensation claims brought by them for damage sustained as a result of their pre-trial detention, Mr Vlieeland Boddy having subsequently been acquitted and Mr Marcelo Lanni provisionally discharged.

Mr Vlieeland Boddy was arrested by the French police on 16 February 2005 pursuant to a European arrest warrant, on suspicion of drug trafficking and money laundering. He was transferred to Spain, where he was placed in pre-trial detention before being released on bail. On 29 May 2006 he was acquitted on all charges. He applied to the Ministry of Justice, claiming compensation for damage sustained during his 139 days in pre-trial detention. His claim was rejected on the grounds that he had been acquitted for lack of sufficient evidence of his involvement in the alleged offences. His subsequent appeal to the *Audiencia Nacional*, appeal on points of law and application to the Supreme Court were likewise rejected.

Mr Marcelo Lanni was arrested by the police in Barcelona on 28 July 2006 on suspicion of two counts of aggravated theft and was placed in pre-trial detention the following day. He was provisionally

released on 10 August 2006. On 16 April 2007 he was provisionally discharged, as the investigating judge found that there was insufficient evidence of his involvement in the alleged offences. Mr Marcelo Lanni filed a claim for compensation with the Ministry of Justice on account of his 14 days in detention. His claim was rejected. His subsequent application for judicial review was dismissed in a decision upheld by the *Audiencia Nacional*, which found that the discharge granted in favour of Mr Marcelo Lanni did not conclusively rule out his responsibility.

Applications by Mr Vlieeland Boddy and Mr Marcelo Lanni to the Constitutional Court were rejected as not raising any issue of special constitutional importance.

Relying in particular on Article 6 § 2 (presumption of innocence), the applicants notably complained that their claims for compensation for time spent in pre-trial detention had been dismissed, thus casting doubt on their innocence despite their acquittal.

Violation of Article 6 § 2 – in respect of both Mr Vlieeland Boddy and Mr Marcelo Lanni

Just satisfaction: EUR 9,600 (non-pecuniary damage) and EUR 5,900 (costs and expenses) to Mr Marcelo Lanni; Mr Vlieeland Boddy did not make any claim for just satisfaction.

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)