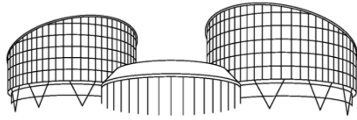

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 318 (2019)
26.09.2019

Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 17 judgments on Tuesday 1 October 2019 and 88 judgments and / or decisions on Thursday 3 October 2019.

Press releases and texts of the judgments and decisions will be available at ***10 a.m.*** *(local time) on the Court's Internet site (www.echr.coe.int)*

Tuesday 1 October 2019

Orlović and Others v. Bosnia and Herzegovina (application no. 16332/18)

The applicants are a family of 14 citizens of Bosnia and Herzegovina, born between 1942 and 1982. They live in Konjević Polje and Srebrenik, in Bosnia and Herzegovina. They survive the first applicant's husband and more than 20 other relatives who were killed in the Srebrenica genocide in 1995.

The case concerns a church built by the Serbian Orthodox Parish on the applicants' land after they had to flee their property in Konjević Polje during the 1992-95 war. The property belonged to the first applicant's husband and his brother and consisted of several individual and agricultural buildings, fields and meadows.

In 1998 a church was built on their land following expropriation proceedings in favour of the Drinjača Serbian Orthodox Parish. The applicants were never informed of those proceedings.

The General Framework Agreement for Peace in Bosnia and Herzegovina ("the Dayton Peace Agreement") put an end to the 1992-95 war. In order to implement Annex 7 to the agreement, which guaranteed the free return of refugees to their homes of origin and restitution of their property, the Republika Srpska (one of the two constituent entities of Bosnia and Herzegovina) enacted the Restitution of Property Act in 1998.

The applicants brought restitution proceedings for their property under that Act. They were granted full restitution in a decision by the Commission for Real Property Claims of Displaced Persons and Refugees ("the CRPC") in 1999, followed by another decision by the Ministry for Refugees and Displaced Persons in 2001. The decisions were both final and enforceable.

The land was subsequently returned to the applicants, except for a plot on which the church had been built. The applicants sought full repossession in the following years, without success.

The applicants also brought civil proceedings against the Serbian Orthodox Church seeking to recover possession of the plot of land and to have the church removed. In 2010 they modified their claim, asking the courts to recognise the validity of an out-of-court settlement. The lower courts dismissed the claim, finding that no agreement had been concluded between the parties, which was then confirmed by the Supreme Court in 2014 and the Constitutional Court in 2017.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, the applicants complain that they have been prevented from effectively using their property because the unlawfully built church has not yet been removed from their land. They also rely on Article 6 § 1 (right to a fair trial) of the Convention to complain about the domestic court decisions concerning their civil claim

Savran v. Denmark (no. 57467/15)

The applicant, Arıf Savran, is a Turkish national who was born in 1985. He moved to Denmark as a six year old with his family in 1991.

After being convicted of aggravated assault committed with other people, which had led to the victim's death, the applicant was in 2008 placed in the secure unit of a residential institution for the severely mentally impaired for an indefinite period and ordered to be expelled.

In January 2012 the applicant's guardian *ad litem* asked that the prosecution review his sentence and the prosecution brought the case before the City Court in December 2013. On the basis of medical reports, Immigration Service opinions and statements by the applicant, the City Court in October 2014 changed Mr Savran's sentence to treatment in a psychiatric department. It also held that despite the severity of his crime it would be inappropriate to enforce the expulsion order.

In particular, the medical experts stressed the need for continued treatment and follow-up in order to ensure his recovery, while the applicant highlighted that all his family were in Denmark, that he could not speak Turkish, only some Kurdish, and that he was worried about the availability of the necessary treatment in Turkey.

On appeal by the prosecution, the High Court reversed the City Court's judgment in January 2015. Basing its conclusion on information on access to medicines in Turkey in the European Commission's MedCOI medical database and a report from the Foreign Ministry, the court found that Mr Savran would be able to continue his treatment in Turkey. It also emphasised the nature and gravity of the crime. He was refused leave to appeal to the Supreme Court in May 2015.

The applicant complains that owing to his mental health it would breach his rights under Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life) to send him to Turkey.

Thursday 3 October 2019

Nikolyan v. Armenia (no. 74438/14)

The case concerns the Armenian system for depriving a person of his or her legal capacity.

The applicant, Gurgen Nikolyan, is an Armenian national who was born in 1939 and lives in Yerevan.

In 2012 Mr Nikolyan lodged a divorce and eviction claim before the courts against his wife, submitting that their conflictual relationship made co-habitation unbearable. However, the domestic courts never examined his claim as he was declared legally incapable in 2013, following proceedings brought by his wife and son, who was living with his family in the same flat.

In particular, in November 2013 the District Court declared Mr Nikolyan incapable, holding that he had a mental disorder and was not able to understand his actions or control them. It based its findings on a court-ordered psychiatric report of September 2012, as well as statements by his wife, neighbours and a local police officer about overly suspicious, argumentative and at times aggressive behaviour and absurd accusations against his wife.

Mr Nikolyan's son, who had been appointed as his guardian during those proceedings, then requested termination of the divorce and eviction proceedings. That request was granted in October 2014 on the grounds that domestic law authorised a guardian to withdraw the claim of a person deprived of their legal capacity.

Mr Nikolyan, who was also in conflict with his son, had asked the local body of guardianship to take into his account his opinion when appointing his guardian, to no avail. He went on to contest the guardianship decision before the courts and the Court of Cassation, taking note of the applicant's

submissions on conflict of interest and regular disputes with his son, remitted the case. In 2017 those proceedings were still ongoing. Their outcome is unknown.

He also made a number of unsuccessful attempts to restore his legal capacity, writing to the Minister of Health and a psychiatric hospital and applying to the courts to review his state of health. In particular, as a person deprived of his legal capacity, he was not allowed by the law in force at the time to institute court proceedings.

Mr Nikolyan brings a number of complaints under Article 6 § 1 (right to a fair hearing), submitting that the proceedings depriving him of his legal capacity were not fair and denied him access to court. In particular, he submits that after he was declared legally incapable he had no standing before the domestic courts to pursue his divorce and eviction claim or to apply for judicial review of his legal incapacity. Also relying on Article 8 (right to respect for private and family life, the home, and the correspondence), he complains that his being deprived of legal capacity breached his right to respect for his private life.

Fleischner v. Germany (no. 61985/12)

The applicant, Gerhard Fleischner, is a German national who was born in 1942 and lives in Schliersee (Germany).

The case concerns his civil liability being established in a kidnapping case, despite the earlier discontinuation of the criminal proceedings against him.

The applicant and four co-accused, including his wife, were indicted on kidnapping charges. The other defendants were convicted but the charges against the applicant were discontinued as he was found unfit to plead in August 2011.

Subsequently, the kidnapping victim's civil proceedings against the applicant and the other accused were successful. In December 2011 the civil court relied on findings of fact set out in the judgment delivered by a criminal court namely, that the applicant and the other accused had fulfilled certain constituent elements (*Tatbestand*) of the crime of kidnapping. The civil court was thereby able to establish the applicant's civil liability despite the criminal proceedings against him being discontinued.

In April 2012 the Regional Court unanimously rejected the applicant's appeal without an oral hearing. The Federal Constitutional Court dismissed a final complaint lodged by the applicant.

Relying on Article 6 § 1 (right to a fair hearing), the applicant complains that the civil proceedings were unfair as the District Court had based its decision solely on the findings of the criminal judgment against the co-accused. He further complains that he was not able to verbally defend his cause before the court of appeal. Relying on Article 7 § 1 (no punishment without law), the applicant alleges that the District Court's order to pay damages in tort had no legal basis in domestic criminal law. Finally, relying in substance on Article 6 § 2 (presumption of innocence), he complains that he was held liable for a criminal offence even though the criminal proceedings against him had been discontinued.

Pastörs v. Germany (no. 55225/14)

The case concerns a Member of Parliament's criminal conviction for denying the Holocaust in Parliament.

The applicant, Udo Pastörs, is a German national who was born in 1952 and lives in Lübtheen (Germany).

On 28 January 2010 (the day after Holocaust Remembrance Day), Mr Pastörs, then a Member of the *Land* Parliament of Mecklenburg-Western Pomerania, made a speech stating that "the so-called

Holocaust is being used for political and commercial purposes". He also referred to a "barrage of criticism and propagandistic lies" and "Auschwitz projections".

In August 2012 he was convicted by a district court, formed of Judge Y and two lay judges, of violating the memory of the dead and of the intentional defamation of the Jewish people.

In March 2013 the regional court dismissed his appeal against the conviction as ill-founded. After reviewing the speech in full, the court found that Mr Pastörs had used terms which amounted to denying the systematic, racially motivated, mass extermination of the Jews carried out at Auschwitz during the Third Reich. The court stated he could not rely on his free speech rights in respect of Holocaust denial. Furthermore, he was no longer entitled to inviolability from prosecution as the Parliament had revoked it in February 2012.

He appealed on points of law to the Court of Appeal which, in August 2013, also rejected his case as ill-founded. At that stage he challenged one of the judges adjudicating his appeal, Judge X, claiming he could not be impartial as he was the husband of Judge Y, who had convicted him at first instance. A three-member bench of the Court of Appeal, including Judge X, dismissed the complaint, finding in particular that the fact that X and Y were married could not in itself lead to a fear of bias.

Mr Pastörs renewed his complaint of bias against Judge X before the Court of Appeal, adding the other two judges on the bench to his claim. In November 2013 a new three-judge Court of Appeal panel, which had not been involved in any of the previous decisions, rejected his complaint on the merits. Lastly, the Federal Constitutional Court declined his constitutional complaint in June 2014.

Relying on Article 10 (freedom of expression) and Article 6 § 1 (right to a fair trial), Mr Pastörs complains about his criminal conviction for the statements he had made in Parliament and alleges that the proceedings against him were unfair because one of the judges on the Court of Appeal panel examining his case was married to the judge who had convicted him at first instance and could therefore not be impartial.

Fountas v. Greece (no. 50283/13)

The applicant, Georgios Fountas, is a Greek national who was born in 1934 and lives in Athens.

The case concerns the applicant's complaint of the lack of an effective investigation into the shooting and killing of his son by police officers and of a lack of access to the investigation case file.

The applicant's son, Lambros Fountas, born in 1975, was shot by police in March 2010 after officers on patrol stopped to carry out a random check of a parked car with two people in it in the early hours of the morning. The version of events accepted by the Athens public prosecution office was that the officers had been fired on and had shot back, killing Mr Fountas. The applicant does not accept that recounting of the incident and says that not all avenues of investigation were followed.

The authorities carried out a preliminary investigation, which included a ballistics examination and a post mortem. The applicant states that he was only informed about the autopsy after it had been carried out and was not able to appoint an external expert to attend it. In April 2010 an anti-terrorism police unit also sent a report on a terrorist group called Revolutionary Fight to the Athens public prosecution office. The applicant's son had allegedly belonged to that group.

In March 2010 the police began a sworn administrative inquiry, which was closed in June 2011 after a finding that the police officers had acted lawfully to defend themselves. In June 2010 the applicant and a relative lodged a criminal complaint with prosecutors against the person or persons responsible for Lambros's death but in January 2012 the complaint was rejected on the grounds that the police had acted in self-defence.

Throughout the domestic proceedings the applicant requested access to many documents in the case files after making his criminal complaint. In particular, he asked for material related to the sworn administrative inquiry, which he eventually received in 2016.

The applicant complains under Article 2 (right to life) that the authorities failed to carry out an effective investigation into his son's death. He alleges under Article 6 § 1 (right to a fair hearing) that his rights as a civil party were violated because the domestic authorities refused to provide him with copies of documents related to the investigation.

Kaak and Others v. Greece (no. 34215/16)

The applicants, 49 adults, teenagers and children of Syrian, Afghan and Palestinian nationalities, unlawfully entered Greece, landing on the island of Chios by boat between 20 March and 15 April 2016. The case concerns their conditions of detention in the Vial and Souda "hotspots" (Greece) and the lawfulness of their detention there.

The applicants were all arrested by the police on the day of their arrival, and expulsions orders were issued against them. The expulsion orders mentioned, firstly, that the persons concerned were to be detained with a view to their immediate return to Turkey, and secondly, that they were to remain in detention until their eventual expulsion, in view of the alleged risk of absconding.

Nevertheless, although some of the under-age applicants were expelled to other European Union countries for the purposes of family reunion or consideration of their asylum requests, others, having submitted an asylum request in Greece, had their expulsion orders revoked, such that they remained in detention.

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants complain about the conditions of detention in the Vial and Souda camps, which they allege to be a danger to their physical and mental wellbeing. They complain both of the quantity and quality, in health terms, of the meals distributed to them and of the inadequacy of the medical provision. Furthermore, they highlight the overcrowding in the camps, which they argue render the material conditions of the accommodation dangerous. Finally, they note the lack of installations capable of guaranteeing the security and safety of women and children, who constitute particularly vulnerable categories of persons. Relying on Articles 5 §§ 1, 2 and 4 (right to liberty and security), they complain of a lack both of free legal aid and of an administrative court on Chios, which they allege renders any complaints about their detention impossible in practice, and consequently arbitrary.

Moustakidis v. Greece (no. 58999/13)

The applicant, Dimitrioos Moustakidis, is a Greek national who was born in 1956 and lives in Thessaloniki (Greece).

The case concerns the expropriation of part of Mr Moustakidis's property (a plot of land, a factory and a warehouse) and the amount awarded to him in compensation.

The courts established the final amount of the award in compensation for the expropriated part of the property. Subsequently, relying on the relevant domestic law, Mr Moustakidis sought compensation for a non-expropriated section of this property as well as for the cost of transferring his business, for the loss of opportunities during the interruption of business and for the further damage sustained by the remainder of his property owing to the nature of the activity for which the expropriation had taken place. The court of appeal and the Court of Cassation dismissed his requests, on the grounds that the civil courts had no jurisdiction to consider them.

Relying, in particular, on Article 1 of Protocol No. 1 (protection of property), Mr Moustakidis complains of an infringement of his right to property, submitting that the domestic courts refused to adjudicate on specific aspects of his claim for compensation, advising him to apply to the European Court of Human Rights or the administrative courts for that purpose.

The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.

These rulings can be consulted from the day of their delivery on the Court's online database HUDOC.

They will not appear in the press release issued on that day.

Tuesday 1 October 2019

Name	Main application number
Tumėnienė v. Lithuania	10544/17
Moscalciuc v. the Republic of Moldova	42921/10
Botnari v. the Republic of Moldova	74441/14
Caşu v. the Republic of Moldova	75524/13
Metropolitan Church of Bessarabia and Nativité de la Vierge Marie Parish v. the Republic of Moldova	65637/10
Akopdzhanyan v. Russia	32737/16
Bukreyev v. Russia	60646/13
Pastukhov v. Russia	74820/14
Aktaş and Others v. Turkey	22112/12
Aramaz v. Turkey	62928/12
Cin v. Turkey	31605/12
Kalkan v. Turkey	21196/12
Kalkan v. Turkey	54698/13
Yamaç v. Turkey	69604/12
Yıldız and Others v. Turkey	39543/11

Thursday 3 October 2019

Name	Main application number
Ismayilzade v. Azerbaijan	22823/10
JSC Guba Konserv 1 v. Azerbaijan	66035/11
Mehrali Mammadov v. Azerbaijan	45036/13
Shirin v. Azerbaijan	7047/12
Kaya v. Belgium	59856/18
Grahovac v. Bosnia and Herzegovina	14769/15
Borisova v. Bulgaria	14997/11
Stuchlý and Others v. the Czech Republic	63451/16
Holzapfel v. Germany	8326/19
Thinnes v. Germany	28989/14
Arabatzis and Others v. Greece	57499/17
Bakor v. Greece	37807/17
Dinoudis and Others v. Greece	8166/17
Mecja and Others v. Greece	80083/17
Csík and Others v. Hungary	30025/18
Frank and Others v. Hungary	49999/18
Kovács and Others v. Hungary	34627/16
Reitinger and Others v. Hungary	63091/14
Cammarata v. Italy	32295/18

Name	Main application number
Montanari and Others v. Italy	55718/08
Navickai v. Lithuania	25832/18
Taso v. Lithuania	12695/18
Valeika and Others v. Lithuania	21934/18
Reşelian v. the Republic of Moldova	14896/07
Stratan v. the Republic of Moldova	44085/08
Ahmed Sheekh and Others v. the Netherlands	80450/13
Maksimoski v. North Macedonia	55427/14
Barbu v. Romania	66609/13
M v. Romania	69681/13
Mihai and Others v. Romania	34565/15
Puşcaşu and Others v. Romania	51569/16
Ştefănoiu v. Romania	70437/14
Șuiu and Others v. Romania	31805/15
Ungurianu v. Romania	16857/16
Zaharia v. Romania	41164/16
Zorică and Others v. Romania	24434/16
Abdusattarov and Babina v. Russia	51863/17
Akirov v. Russia	82206/17
Azimov v. Russia	42812/11
Litvintsev v. Russia	12409/15
Roganov v. Russia	9212/12
S.D. v. Russia	25166/18
Voyevodin and Others v. Russia	6558/18
Golić and Others v. Serbia	60162/16
Gopić and Others v. Serbia	32878/16
Jovičić v. Serbia	65474/16
Kostić and Others v. Serbia	45727/16
Mihajlović and Others v. Serbia	11362/17
Stojanović and Milenović v. Serbia	70716/16
CIVILCO MKH spol. s r.o. v. Slovakia	57285/18
Darázs and Adamčo v. Slovakia	727/19
Kadnár v. Slovakia	58143/18
Altınay v. Turkey	45007/10
Atalay v. Turkey	5954/13
Çellik v. Turkey	62349/11
Kahraman and Others v. Turkey	18107/09
Kahraman v. Turkey	31042/09
Kavaklı and Others v. Turkey	55901/11
Korkut v. Turkey	26053/12
Menkaytman v. Turkey	31062/11
Nesrin Hüseyinzade v. Turkey	19502/13
Özmen v. Turkey	50812/17
Polat v. Turkey	37887/09
Sarıoğlu v. Turkey	42879/17

Name	Main application number
Sözen v. Turkey	65578/10
Taşçı v. Turkey	36446/06
Taşçı v. Turkey	56575/10
Temiz v. Turkey	10137/18
Üçer v. Turkey	27448/12
Yamaç v. Turkey	70151/12
Yıldız v. Turkey	59509/10
Bondarenko v. Ukraine	40267/10
Kharchenko v. Ukraine	37666/13
Kosternyy and Mazur v. Ukraine	8490/19
Masakovskiy v. Ukraine	36190/10
Nesterenko and Others v. Ukraine	26256/11
O.V. v. Ukraine	60800/10
Promimpro Exports and Imports Limited and Sinequanon Invest v. Ukraine	32317/10
Salyatytskyy v. Ukraine	73254/10
Sokolov v. Ukraine	60693/09
Tokarev v. Ukraine	7983/10
Tovmasyan v. Ukraine	57990/13

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter @ECHRpress.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Patrick Lannin (tel: + 33 3 90 21 44 18)

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.