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

Press Release
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Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 13 judgments on Tuesday 24 September 2019 and 40 judgments and / or decisions on Thursday 26 September 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 24 September 2019

Antunes Emídio and Soares Gomes da Cruz v. Portugal (applications nos. 75637/13 and 8114/14)

The applicants are Joaquim António Antunes Emídio and Luís Manuel Soares Gomes da Cruz. They are Portuguese nationals born respectively in 1955 and 1944 and living in Santarém and Lisbon.

The case concerns the two applicants being convicted of defaming politicians, fined and ordered to pay compensation

In March 2011 Mr Antunes Emídio, a journalist at the time, wrote an opinion piece in the regional weekly *O Mirante*, headlined, "Only chickens were left", which criticised the Portuguese political class. In particular, it said of R.B., the State Secretary for Agriculture, Forests and Regional Development, that he was the most "idiotic politician I know".

After a criminal complaint by R.B., Mr Antunes Emídio was convicted in July 2012 of aggravated defamation. The court found his statements had amounted to value judgments which had no connection to R.B.'s conduct as a State Secretary and had gone beyond what could be considered as objective criticism. He was ordered to pay 2,500 euros (EUR) compensation and fined the same amount. His appeals were rejected.

Mr Soares Gomes da Cruz, a doctor and managing partner of a clinic providing occupational health services in the town of Lourinhã, published an open letter in a local newspaper in September 2009 after his clinic was not invited to take part in negotiations with the town council to set up a council-run occupation health service.

The article was critical of the town's mayor, referring among other things to his alleged "lack of character and honesty and his cowardice". The applicant also distributed a similarly critical leaflet. After a complaint by the mayor and the town council, Mr Soares Gomes da Cruz was convicted of two offences of libel through the media and one offence of insulting a legal entity. He was fined and ordered to pay compensation to the mayor. On appeal, the fine and compensation were reduced and set at EUR 18,000 and EUR 4,500 respectively.

The applicants complain that their convictions were in breach of Article 10 (freedom of expression) of the European Convention on Human Rights.

Camacho Camacho v. Spain (no. 32914/16)

The applicant, Mr Antonio Camacho Camacho, is a Spanish national who was born 1980 and lives in Bonavista (Tarragona). The case concerns prison sentences and fines imposed, on appeal, on Mr Camacho Camacho, without any questioning of the applicant or witnesses and despite the fact that the court of appeal had reassessed the subjective aspects of the case.

On 30 April 2008 Ms C., a lawyer representing the applicant's wife, obtained custody of their daughter, a minor. On 7 May 2008 Ms C. was the victim of an assault. The applicant and two others were charged with the offence. Following a public hearing, by judgment of 15 March 2013, Criminal Court no. 3 acquitted the defendants. The victim, Ms C., and the public prosecutor's office appealed.

The *Audiencia Provincial*, by judgment of 7 October 2013, declared the judgment null and void on the grounds of a serious error in assessing the evidence. The *Audiencia Provincial* only partly accepted the facts declared proven by the criminal court, and called a witness's credibility into doubt. It ruled, without a public hearing, that the circumstantial evidence pointed to the applicant as having been involved in the acts in question. It remitted the case to Criminal Court no. 3.

On 15 January 2014 the criminal court, having reconsidered the evidence, once again held that there was insufficient evidence of the applicant having committed the offences in question, and once again acquitted him. The public prosecutor's office appealed.

By decision of 27 May 2015 a new bench of the *Audiencia Provincial* rejected the evidence adduced by the public prosecutor's office. On 15 July 2015 the *Audiencia Provincial* held a public hearing. No evidence was considered, and the public prosecutor's office pointed out that the examination of the applicant had been rejected and could therefore no longer take place. At the end of the hearing the applicant, who attended but was not questioned, spoke last, denying any involvement in the impugned facts.

On 29 July 2015 the *Audiencia Provincial* found the applicant guilty and sentenced him to imprisonment, fined him and ordered him to pay compensation to the victim. According to the *Audiencia Provincial*, the evidence gathered at first instance supported the following interpretation: the applicant had planned the assault on Ms C. in response to the rejection of his application for custody of his daughter during the civil proceedings.

On 1 September 2015 the applicant applied to have the judgment delivered by the *Audiencia Provincial* set aside, but his application was rejected. The applicant then lodged an *amparo* appeal with the Constitutional Court. On 26 January 2016 his appeal was declared inadmissible on the grounds that he had not demonstrated its "special constitutional importance".

Relying on Article 6 § 1, the applicant complains that the *Audiencia Provincial* modified the declared facts as proven at first instance after a subjective assessment of the evidence which he claimed had flouted the principles of immediacy and adversarial proceedings.

Thursday 26 September 2019

Hernádi v. Croatia (no. 29998/15)

The applicant, Zsolt Tamás Hernádi, is a Hungarian national who was born in 1960 and lives in Kisoroszi (Hungary).

The case concerns the Croatian authorities' efforts to question the applicant, who is the Chairman and Chief Executive Officer of the Hungarian national oil and gas company MOL, in connection with criminal proceedings against him for bribery.

In 2009 MOL assumed control over the Croatian national oil company, INA-Industrija Nafte d.d., in the context of a privatisation agreement. Two years later the Croatian authorities opened an investigation against the applicant and the former Croatian Prime Minister, I.S., on suspicion of bribery in relation to the 2009 INA-MOL agreement. The former PM was convicted of the offence in 2012, but the Constitutional Court then quashed his conviction and ordered a retrial. The proceedings are still ongoing, as are those against the applicant who was indicted in 2014.

In the meantime, a dispute arose between the Croatian authorities and the Hungarian authorities: Croatia wished to question the applicant as a suspect but Hungary has refused to help, essentially on

national security grounds and because an investigation has already been conducted in Hungary, the applicant questioned as a witness and no criminal offence established.

This situation led to the Croatian courts ordering the applicant's pre-trial detention in 2013, and the authorities then issuing several European arrest warrants ("EAW") for him as well as an international alert, known as a Red Notice, indicating that he was wanted for prosecution. Neither the EAWs nor the Red Notice have resulted in the applicant's surrender to the Croatian authorities.

Mr Hernádi lodged two constitutional complaints with the Croatian Constitutional Court in January and September 2014, essentially challenging the decision ordering his pre-trial detention. After lodging the first constitutional complaint, he also asked the Constitutional Court to suspend the pre-trial detention order, making reference to the consequences of the EAW on his business activities because he was prevented from travelling abroad. The first constitutional complaint was declared inadmissible, while the second was dismissed as unfounded, the Constitutional Court finding nothing arbitrary in the pre-trial decision.

Relying on Article 2 (freedom of movement) of Protocol No. 4 to the Convention, Mr Hernádi complains about the detention order and EAWs issued by the Croatian authorities which have effectively prohibited him from leaving Hungary.

Robert v. France (no. 1652/16)

The applicant, Mr Richard Robert, is a French national who was born in 1972 and is incarcerated in Yzeure (France). The case concerns the replacement of the sentence handed down by the Moroccan courts on a French national in the framework of a procedure for transferring him to France to serve the sentence.

Mr Robert was prosecuted by the Moroccan authorities for acts relating to a terrorist network, and was accused, in particular, of having directed the network and incited the perpetration of terrorist acts. On 18 September 2003 the Criminal Division of the Rabat (Morocco) Court of Appeal sentenced him to life imprisonment.

On 15 May 2012, pursuant to the 10 August 1981 Franco-Moroccan Convention on assistance to detained persons and the transfer of convicted persons, Mr Robert was transferred to France in order to continue to serve his sentence. In that framework, he applied to a French court to change the sentence handed down by the Moroccan court.

By judgment of 31 May 2013 the Paris Criminal Court ruled that the applicable sentence should be appraised by comparing the Moroccan and French legislation in force at the time of the applicant's transfer to France, rather than the laws in force at the time of the impugned acts. Furthermore, the Paris Criminal Court pointed out that the aim was not to retry the applicant but merely to replace the sentence handed down in Morocco with the sentence which was most similar in French law, or reducing that sentence to the legal maximum term applicable in France. Accordingly, the life sentence was replaced with a 30-year prison sentence as laid down in Articles 421-2-1 and 421-6 of the Penal Code resulting from the 23 January 2006 Act. Mr Robert appealed.

The Paris Court of Appeal upheld the judgment, with the proviso that time served in Morocco should be deducted. Mr Robert appealed on points of law. On 24 June 2015 the Court of Cassation dismissed the appeal on points of law and upheld the judgment of the Court of Appeal.

Relying on Article 3 (prohibition of torture), Article 6 (right to a fair trial) and Article 7 (no punishment without law), the applicant complains that the French courts, firstly, ruled that the substitute sentence should be calculated on the basis of the provisions applicable at the time of his transfer, rather than of those in force at the time of the commission of the acts, and secondly, failed to take account of the context in which he was convicted, claiming that the Moroccan courts had staged a show trial under the direct influence of the executive.

Ilie v. Romania (no. 26220/10)

The applicant, Elena Ilie, is a Romanian national who was born in 1944 and lives in Vâlcea (Romania).

The case concerns the alleged lack of impartiality of domestic judges in a dispute over property rights.

In 1991 Ms Ilie's ancestor applied successfully under domestic legislation to have land restored to her which had been nationalised by the communist regime. The applicant subsequently inherited the land. In 2005 private parties requested the annulment of the documents acknowledging the ancestor's rights to the land. Judge M.F. of the District Court held that the authorities had acknowledged that they had made a mistake in producing the documents and that the applicant was unable to prove her ancestor's ownership of the land before it had been nationalised. That judgment was quashed in 2007 by the County Court, which recognised the validity of the documents and the ancestor's entitlement to the property.

A few months later the same private parties sought a court order acknowledging they had acquired property rights to the land by prescription. In 2008, the County Court, with M.V., G.D., and L.I. as judges, found that the private parties had possessed the disputed land for more than 30 years.

Proceedings by the private parties for the return of the land were presided over by Judge M.F. A challenge for bias by the applicant over the judge's role in the earlier case was dismissed in 2009 and the court went on to allow the private parties' claim.

An appeal by the applicant against both judgments came before Judges M.V., G.D. and L.I., who sought to recuse themselves owing to their earlier involvement. However, the recusal request was rejected. The County Court found in November 2009 that both parties held property titles to the land but that those of the private parties were better defined.

Relying on Article 6 § 1 (right to a fair hearing), the applicant complains that the proceedings which were concluded by the final judgment of 24 November 2004 of the Vâlcea County Court were unfair because of the judges' lack of impartiality, a wrong assessment of the evidence by the domestic courts and their misinterpretation of the applicable legislation. Relying on Article 1 (protection of property) of Protocol No. 1, the applicant further complains of a breach of her property rights, due to the fact that she had been deprived of land that she had allegedly obtained under the relevant property restitution laws.

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 24 September 2019

Name	Main application number
Antohi v. Romania	48093/15
Gruia Stoica v. Romania	53179/14
Mihăilescu v. Romania	72608/14
Baysultanova and Others v. Russia	12642/13
Ganatova and Others v. Russia	44776/09
Gedzhadze v. Russia	83594/17
Ismailov v. Russia	45852/17
Israilovy and Others v. Russia	34909/12

Name	Main application number
Kochergin v. Russia	71462/17
Milinov v. Russia	51165/08
Neuymin v. Russia	42265/06

Thursday 26 September 2019

Name	Main application number
Majidli and Others v. Azerbaijan	56317/11
A.-G. v. Finland	27155/18
Kontos v. Greece	6297/12
J.J. v. Hungary	9293/14
Žerebkovs v. Latvia	16800/11
Calleja v. Malta	83275/17
Cauchi v. Malta	19579/18
Cauchi v. Malta	19600/18
T.E. v. the Netherlands	43462/16
Anastasov v. North Macedonia	46082/14
Dželadin v. North Macedonia	43440/15
Miševski and Others v. North Macedonia	32866/09
Redjepi v. North Macedonia	16632/15
B.S. v. Poland	4993/15
Cieśliczka v. Poland	67178/17
Dziunikowski v. Poland	65970/12
Korbal v. Poland	2403/14
Krutak v. Poland	7967/14
Orłowski v. Poland	2923/18
Polus v. Poland	3140/14
Szrama v. Poland	2598/14
Dobrilă and Vodislav v. Romania	44489/15
Ganea v. Romania	21525/15
Golaşu v. Romania	79320/17
Ionuț Marius Ionescu v. Romania	55312/13
Manta and Others v. Romania	32354/17
Mihai v. Romania	50266/13
Oros v. Romania	45011/14
Golyshev v. Russia	51116/14
Kireyeva v. Russia	48159/17
Shermatov and Others v. Russia	35880/11
Valiulliny v. Russia	17550/11
Volkovy v. Russia	4503/07
Staiano v. San Marino	75201/16
Bakker v. Switzerland	7198/07
Gfeller v. Switzerland	29063/18
Skomorokhov v. Ukraine	58662/11

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