



Judgments of 15 September 2015

The European Court of Human Rights has today notified in writing 11 judgments¹:

ten Chamber judgments are summarised below;

one Committee judgment, which concerns issues which have already been submitted to the Court, can be consulted on [Hudoc](#) and does not appear in this press release.

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

Tsanova-Gecheva v. Bulgaria (application no. 43800/12)*

The applicant, Velichka Tsanova-Gecheva, is a Bulgarian national who was born in 1964 and lives in Sofia.

The case concerned a complaint regarding the allegedly inadequate judicial review of an appeal lodged by Ms Tsanova-Gecheva, a judge, against a decision on the appointment of the President of the Sofia City Court.

Ms Tsanova-Gecheva had been Vice-President of the Sofia City Court since July 2009. When the post of President became vacant, she was appointed to fill the position on an interim basis. The following month the Supreme Judicial Council published a competition notice with a view to filling the vacant post. Following an assessment by the proposals and assessment committee of the Supreme Judicial Council, Ms Tsanova-Gecheva and another candidate, V.Y., both received the top ranking. The Supreme Judicial Council voted on the appointment by secret ballot; V.Y. obtained 12 votes and the applicant nine. In the second round V.Y. obtained 18 votes compared with five for Mrs Tsanova-Gecheva. V.Y. was appointed President of the court.

V.Y.'s candidature and appointment received widespread media coverage and were vehemently criticised by numerous journalists and public figures, as V.Y. had been presented as a close friend of the Minister of the Interior. Two judges resigned from the Supreme Judicial Council and publicly criticised the appointment procedure, stating that it had been non-democratic and that the outcome had been fixed in advance.

Ms Tsanova-Gecheva appealed to the Supreme Administrative Court against the decision of the Supreme Judicial Council, arguing that it had been in breach of the law and the applicable procedural rules. In a judgment of 3 November 2011 the Supreme Administrative Court held that the failure to conduct the vote by means of a show of hands, in accordance with the statutory provisions, constituted grounds for setting aside the Supreme Judicial Council's decision. The Supreme Judicial Council and V.Y. appealed on points of law. In her observations, the applicant contested the Supreme Administrative Court judgment of 3 November 2011, which in her view had not been accompanied by sufficient reasons. She maintained that, by rejecting her arguments concerning the lack of reasons for the decision of the Supreme Judicial Council, the judgment of 3 November 2011 had not conducted a sufficiently wide-ranging review and had not examined all the legal and factual

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

issues that were decisive for the outcome of the case. The Supreme Administrative Court, sitting as a bench of five judges, delivered its judgment on 12 January 2012. It held that the vote by secret ballot conducted by the Supreme Judicial Council had been lawful. The latter's decision had thus been valid and the judgment of 3 November 2011 setting it aside had erred in its application of the law. The Supreme Administrative Court further held that it was unnecessary to rule on the arguments raised by Ms Tsanova-Gecheva, since the judgment complained of had been in her favour. On the merits, it dismissed her appeal against the decision of the Supreme Judicial Council.

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, Ms Tsanova-Gecheva alleged that the scope of the judicial review conducted by the Supreme Administrative Court had been inadequate.

No violation of Article 6

Lari v. the Republic of Moldova (no. 37847/13)

The applicant, Ana Lari, is a Moldovan national who was born in 1961 and lives in Chişinău.

The case concerned Ms Lari's complaint about the investigation into the death of her 17-year-old daughter.

Ms Lari's daughter was found dead in the office of a gas company on 13 June 1999 after having gone to a party and stayed out all night. The following day a forensic report was issued which found that she had died from an overdose of sedatives, having sustained injuries just beforehand – possibly from sexual intercourse. A criminal investigation was formally instituted at the end of October 1999 and six witnesses were subsequently heard. All six – some of whom had been to the party as well as a security officer at the gas company who had called the emergency services – denied having had sexual intercourse with Ms Lari's daughter. The investigation was closed two months later, the prosecuting authorities finding that Ms Lari's daughter must have been worried that she had not told her parents that she was going to stay out all night and took sedatives so that she would be hospitalised and avoid punishment. The proceedings were reopened in 2005, suspended in 2008, resumed for one month in 2012 and then suspended again; they are currently still pending.

Relying on Article 2 (right to life) of the European Convention, Ms Lari alleged that the investigation into her daughter's death had been superficial with no real attempt to establish what had really happened or to keep her informed of the investigation's progress.

Violation of Article 2 (investigation)

Just satisfaction: 12,000 euros (EUR) (non-pecuniary damage) and EUR 2,100 (costs and expenses)

Shishanov v. the Republic of Moldova (no. 11353/06)*

The applicant, Valeriy Shishanov, is a Russian national who was born in 1952. He is currently in detention in the Russian Federation.

The case concerned his allegations of inadequate conditions of detention and the censoring of his correspondence in prison.

In 1992 Mr Shishanov had a leg amputated and was fitted with a prosthesis. In 1996 he was arrested and taken into police custody by the Moldovan authorities and was subsequently placed in pre-trial detention. In May 1997 he was sentenced to 25 years' imprisonment for escaping from detention, procuring and possessing ammunition and explosives, theft of ammunition and explosives, bribery with threats of death and kidnapping, and attempted murder. He was detained in Soroco Prison no. 6, Cahul Prison no. 5 and Taraclia Prison no. 1 in the Republic of Moldova. In October 2010, while he was being detained in Bender Prison no. 12, he wrote to the European Court of Human Rights. His

letter was returned after being sent to the wrong address. In February 2014 Mr Shishanov was transferred to a prison in the Russian Federation.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Shishanov complained of his conditions of detention in the prisons in the Republic of Moldova. Under Article 8 (right to respect for private and family life, home and correspondence), he complained of the censoring of his correspondence by the authorities in some of those prisons.

Violation of Article 3

Violation of Article 8

Just satisfaction: EUR 10,000 (non-pecuniary damage)

Milka v. Poland (no. 14322/12)

The applicant, Sławomir Milka, is a Polish national who was born in 1957 and is detained in Dąbrowa Górnicza (Poland).

The case concerned Mr Milka's disciplinary punishments for refusing to be strip-searched in prison.

Mr Milka was detained on remand in 2007 and 2008 and, subsequently convicted, served his sentence in various Polish detention centres and prisons. His first disciplinary punishment was a reprimand in October 2011 for refusing to undress when being transported from prison, then he was banned from receiving food parcels for two months in May 2012 when he refused to undergo a body search and finally he was placed in solitary confinement on two occasions in June and July 2012 for refusing on three further occasions to be body searched. The domestic courts dismissed Mr Milka's appeals – without examining the actual reasons for the disciplinary measures – on the ground that he had refused to undergo the body searches and that this constituted a disciplinary offence.

Mr Milka alleged that the disciplinary punishments imposed on him for refusing body searches had amounted to inhuman and degrading treatment. The Court examined the case under Article 8 (right to respect for private and family life) of the Convention in particular.

Violation of Article 8

Just satisfaction: EUR 2,500 (non-pecuniary damage)

Mogielnicki v. Poland (no. 42689/09)*

The applicant, Jerzy Mogielnicki, is a Polish national who was born in 1951 and lives in Łąnięta (Poland).

The case concerned the fee Mr Mogielnicki had been required to pay, and which he considered excessive, in order to lodge a cassation appeal in civil proceedings, and his alleged inability to pay the sum in question.

In February 2006 Mr Mogielnicki, a former manager of a large pharmaceutical company, brought proceedings for compensation against the company, complaining of the latter's refusal to allow him to buy shares. The Regional Court dismissed the case on the grounds that Mr Mogielnicki's supposed claim and the damage he alleged had not been established. He appealed unsuccessfully and went on to lodge a cassation appeal. He requested exemption from payment of the fee relating to his cassation appeal. The Court of Appeal refused the request on the ground that it was not justified by his financial situation. Mr Mogielnicki lodged two further requests for exemption, which were declared inadmissible.

Relying on Article 6 § 1 (right of access to a court), Mr Mogielnicki complained of the domestic courts' refusal to exempt him from payment of the fee for lodging his cassation appeal.

Violation of Article 6 § 1

Just satisfaction: EUR 3,300 (non-pecuniary damage)

Moinescu v. Romania (no. 16903/12)*

The applicant, Dumitru Moinescu, is a Romanian national who was born in 1952 and lives in Medgidia (Romania).

The case concerned Mr Moinescu's conviction on appeal without witnesses being heard, after he had been acquitted by the lower courts on the basis of the same evidence.

In April 2006 a fight broke out in the small hours of the morning between two groups of people in a nightclub in Medgidia. The nightclub and two vehicles parked nearby were badly damaged.

Mr Moinescu, who was the mayor of Medgidia at the time, went to the nightclub and asked the municipal services to clear the scene and clean up. He then went to the town hall for a meeting with his adviser on the Roma community and the latter's brother, who had been involved in the fight.

Criminal proceedings were commenced against eight individuals and Mr Moinescu was prosecuted for harbouring a criminal, accused of seeking to hamper the investigation into the fight. The Court of First Instance acquitted the applicant after hearing evidence from him and from 21 witnesses. That judgment was upheld following an appeal by the public prosecutor's office.

The public prosecutor's office lodged a further appeal and the Court of Appeal sentenced Mr Moinescu to a suspended term of six months' imprisonment for harbouring criminals. It found that the applicant had lent assistance to persons involved in the fight, interfered in the investigation and sought by his actions to intimidate the judicial authorities with a view to hampering the investigation.

Relying on Article 6 § 1 (right to a fair trial), Mr Moinescu alleged that his right to a fair trial had been breached as he had been convicted by the appellate court without the direct taking of evidence and despite the fact that he had been acquitted at first instance on the basis of the same evidence.

Violation of Article 6 § 1

Just satisfaction: EUR 3,000 (non-pecuniary damage)

Poede v. Romania (no. 40549/11)*

The applicant, Puiu Cristinel Poede, is a Romanian national who was born in 1975 and lives in Vaslui (Romania).

The case concerned his allegations of ill-treatment by law-enforcement officers.

Mr Poede was travelling in a car driven by his brother when the vehicle broke down. After parking the car and leaving Mr Poede to watch it, his brother went in search of some tools. Shortly afterwards, two police officers stopped and informed Mr Poede that the car was in a no-parking zone. They asked Mr Poede for his identity card and he explained that he had sent it to the authorities for renewal. The police summoned two gendarmes to the scene and Mr Poede alleges that he was subsequently beaten and kicked at the scene and at the police station where he was taken by the police officers and the gendarmes. Mr Poede was ordered to pay a minor-offence fine for parking in a no-parking zone and refusing to present his identity card. He lodged a complaint against the two gendarmes and one of the police officers for misconduct and applied to join the proceedings as a civil party seeking damages. The public prosecutor's office opened an investigation and heard evidence from Mr Poede and from the police officers and gendarmes who had participated in the arrest. The court discontinued the proceedings, taking the view that the use of

force to control Mr Poede, who had started a row, had been permitted by the law and had complied with the statutory conditions. Accordingly, the law-enforcement officers had fulfilled their professional duty.

Mr Poede lodged further criminal complaints against the police officers and gendarmes for abuse of authority and misconduct. The court discontinued the proceedings.

Mr Poede contended that he had been ill-treated by State agents during his arrest on 18 August 2009 and that the authorities had failed to conduct an effective investigation into his allegations. The Court examined the case under Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

No violation of Article 3 (treatment)

Violation of Article 3 (investigation)

Just satisfaction: EUR 7,500 (non-pecuniary damage)

Javor and Javorová v. Slovakia (no. 42360/10)

The applicants, Jozef Javor (now deceased) and Eva Javorová, husband and wife, are Slovak nationals who were born in 1952 and 1954 respectively. Eva Javorová, who lives in Bratislava, has continued the application both on her own and her deceased husband's behalf.

The case concerned a third-party claim for damages attached to criminal proceedings for fraud.

In October 2002 the applicant couple lodged a criminal complaint against an individual, A., for failing to renovate their flat despite payment of a sum of money. They alleged that this might have amounted to fraud. When questioned by an investigator in December 2002, Ms Javorová stated that she wished to join the proceedings as a civil party claiming damages and, in January 2003, a criminal investigation was opened into the suspicion of fraud. The criminal charges against A. brought in November 2004 were quashed by the prosecuting authorities in January 2005 and the proceedings against A., including the applicants' third-party civil claim for damages, were eventually discontinued with final effect in February 2010, as the investigator concluded that there was no criminal case to answer. In the meantime, the applicants had lodged a constitutional complaint challenging the length of proceedings on their third-party claim for damages attached to the criminal proceedings, alleging a violation of the reasonable-time requirement under Article 6 § 1 of the European Convention. This complaint was declared inadmissible in March 2010; the Constitutional Court held that an aggrieved party claiming damages in criminal proceedings only benefited from the right to a hearing within a reasonable time under Article 6 after a charge had been brought against a specific person and, in the present case, the charges against A. had been quashed.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicants complained about the excessive length – more than seven years at the pre-trial stage of the proceedings without a decision ever having been taken on their claim – of the proceedings on their third-party claim for damages.

Violation of Article 6 (length of proceedings)

Just satisfaction: EUR 5,200 (non-pecuniary damage) and EUR 1,000 (costs and expenses)

Dilipak v. Turkey (no. 29680/05)*

The applicant, Abdurrahman Dilipak, is a Turkish national who was born in 1949 and lives in Istanbul.

The case concerned the judicial proceedings brought against the author of an article criticising high-ranking members of the military.

Mr Dilipak is a writer and journalist who describes himself as a human rights activist.

In August 2003 he published an article containing criticisms of high-ranking members of the military who were about to retire. The military prosecutor's office sought Mr Dilipak's conviction under the Military Criminal Code. Mr Dilipak raised an objection alleging that the military court lacked jurisdiction to try him as he was a civilian. While the case was pending before the Military Court of Cassation, Law no. 5530 of 29 June 2006 was enacted, amending the Military Criminal Code and doing away with the military courts' jurisdiction to try civilians for offences of the type of which Mr Dilipak was accused. The case was referred to the civilian courts, and in June 2010 a civilian court ruled that the prosecution was time-barred.

Relying in particular on Article 6 § 1 (right to a fair trial within a reasonable time), Mr Dilipak alleged that the length of the proceedings against him had breached the "reasonable time" requirement. Relying notably on Article 10 (freedom of expression), he contended that he had been tried in criminal proceedings for having expressed his opinions.

Violation of Article 6 § 1 (length of proceedings)

Violation of Article 10

Just satisfaction: The applicant did not submit a claim for just satisfaction within the time allocated.

Kaytan v. Turkey (no. 27422/05)

The applicant, Hayati Kaytan, is a Turkish national who was born in 1968 and is currently serving a life sentence following his conviction in 2005 for terrorist activities.

The case essentially concerned Mr Kaytan's complaint that his life sentence had no possibility of a review.

Mr Kaytan was arrested in Syria following his indictment for being a member of the PKK (the Workers' Party of Kurdistan), an illegal armed organisation, and handed over to the Turkish authorities in August 2003. He was then interrogated by gendarmes and the prosecuting authorities and admitted to having been a member of the PKK and involved in several armed attacks. He later retracted his statements at trial, alleging that he had been put under psychological pressure during his interrogation. He was ultimately convicted of seeking to destroy the unity of the Turkish State and to remove part of the country from the State's control and sentenced to "aggravated" life imprisonment. His conviction was upheld on appeal in January 2005.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), he notably alleged that his sentence of life imprisonment without possibility of review amounted to inhuman punishment.

Violation of Article 3 – by reason of the lack of possibility of review of the life sentence imposed on the applicant

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It further awarded the applicant EUR 1,000 in respect of costs and expenses.

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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.