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

Press Release
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ECHR 271 (2016)
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Judgments and decisions of 1 September 2016

The European Court of Human Rights has today notified in writing nine judgments[1] and two decisions[2]:

five Chamber judgments are summarised below; for four others, in the cases of *X and Y v. France* (application no. 48158/11), *Wenner v. Germany* (no. 62303/13), *Mikhno v. Ukraine* (no. 32514/12) and *Svitlana Atamanyuk and Others v. Ukraine* (nos. 36314/06, 36285/06, 36290/06 and 36311/06), separate press releases have been issued;

the two decisions can be consulted on *Hudoc* and do not appear in this press release.

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

Marc Brauer v. Germany (application no. 24062/13)

The applicant, Marc Brauer, is a German national who was born in 1978 and lives in Rheine (Germany). The case concerned the rejection of his appeal against an order confining him to a psychiatric hospital for failure to meet the one-week time-limit prescribed by law.

In June 2012, Mr Brauer was arrested for damaging parked vehicles with a hammer and resisting a court's clerk. As a preliminary measure, Mr Brauer, who had already been under psychiatric treatment in the past, was confined to a psychiatric hospital and given a court-appointed lawyer. On 18 December 2012, the Münster Regional Court, finding that he could not be held criminally responsible and was mentally ill, upheld his confinement to the hospital. Immediately after the hearing, he announced his wish to appeal against the court's decision and mandate a new defence lawyer. He was given express instructions by the judge on how and where to lodge an appeal.

Nevertheless, Mr Brauer, after receiving written instructions by his court-appointed lawyer, subsequently typed and signed an appeal letter to the Rheine District Court. It was rejected as belated, the Regional Court reiterating the express judicial instruction of 18 December 2012 to Mr Brauer that an appeal could be lodged in writing to the Münster Regional Court and the Münster District Court but at the Rheine District Court it could only be orally recorded by the registry. In January 2013 the court-appointed lawyer, who had resumed Mr Brauer's defence, requested a reinstatement of the proceedings and lodged an appeal on points of law, alleging that his client had misunderstood instructions on how to lodge an appeal. Ultimately, in April 2013 the Federal Court of Justice refused to examine Mr Brauer's appeal on the merits as he had failed to lodge it within the one-week time-limit and rejected his request for reinstatement of the proceedings. This court placed decisive weight on the express judicial instructions given on 18 December 2012. Any misunderstandings were considered to be Mr Brauer's own responsibility, there being no evidence to show that he had not understood instructions due to his mental health.

Mr Brauer filed a constitutional complaint, which was declined in June 2013 with no reasons given.

[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

[2] Inadmissibility and strike-out decisions are final.

Relying on Article 6 § 1 (access to court) of the European Convention on Human Rights, Mr Brauer complained about the refusal to examine his appeal on points of law on the merits and the rejection of his request for reinstatement of the proceedings concerning his confinement to a psychiatric hospital, claiming in particular that he had not understood the judge's instructions with regard to lodging an appeal due to his mental state and misunderstood counsel's instructions as they had been unclear.

Violation of Article 6 § 1

Just satisfaction: Mr Brauer did not submit any claim in respect of just satisfaction.

Huzuneanu v. Italy (no. 36043/08)

The applicant, Luciano Valentin Huzuneanu, is a Romanian national who was born in 1973 and lives in Romania.

The case concerned Mr Huzuneanu's inability to obtain the reopening of criminal proceedings against him, which had led to his conviction *in absentia*.

Following his prosecution on a charge of murder, Mr Huzuneanu was sentenced by the Rome Assize Court to 28 years' imprisonment on 15 March 2004. The authorities, taking the view that he had absconded from justice, assigned him a lawyer, who took part in the proceedings. The lawyer appealed against the first-instance judgment before the Rome Assize Court of Appeal, which dismissed the appeal on 17 January 2005. He also lodged an appeal on points of law but it was declared inadmissible. An international arrest warrant was issued against Mr Huzuneanu on 19 December 2005 and he was arrested in Romania in 2006, then extradited to Italy at an unknown date.

Mr Huzuneanu, relying on Article 175 of the Code of Criminal Procedure, submitted that his appeal against his conviction should not be time-barred. He argued that he had not absconded from justice and had not waived his right to appear, stating that because he had not been notified of the procedural developments at his place of residence in Romania, he had not been duly informed of the criminal proceedings against him. In a decision of 12 April 2007, the Rome Assize Court of Appeal took the view that Mr Huzuneanu was entitled to be exempted from the time-bar but to appeal only against the second-instance judgment. Mr Huzuneanu appealed on points of law, alleging that he should have a fresh trial on the merits, not only a decision on points of law. That claim was dismissed by the Court of Cassation on 13 January 2008, on the ground that a person convicted *in absentia* forfeited his right to the re-opening of the period for appeal if the assigned counsel had, independently and without the client's knowledge, appealed against the decision in question and if the court of competent jurisdiction had then ruled on that appeal.

In another set of proceedings concerning a different person convicted *in absentia*, the Constitutional Court declared Article 175 § 2 to be in breach of the Constitution, on the ground that the provision did not allow a defendant not having effective knowledge of the proceedings to reopen the period for an appeal against a decision given *in absentia* where the same appeal had previously been lodged by counsel. In December 2009, based on that decision, Mr Huzuneanu lodged a request for a new time-limit for appeal, but without success.

Relying on Article 6 (right to a fair hearing) of the Convention, Mr Huzuneanu complained of his inability to reopen criminal proceedings and thus to present his defence before the Italian courts.

Violation of Article 6

Just satisfaction: Mr Huzuneanu did not submit any claim in respect of just satisfaction.

Just satisfaction

Valle Pierimpiè Società Agricola S.P.A. v. Italy (no. 46154/11)*

The applicant, Valle Pierimpiè società Agricola S.p.a., is an Italian limited company.

The case concerned a declaration to the effect that a part of the Venice lagoon known as Valle Pierimpiè, which the applicant company had purchased and had been using for fish farming, belonged to the public maritime domain.

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant company complained of having been deprived without compensation of the fishing valley it had been using, and of being held liable to pay a potentially very large sum to the State in compensation for unlawful occupancy of the property.

In its judgment on the merits of 23 September 2014, the Court found a violation of Article 1 of Protocol No. 1 and held that Italy was to pay the applicant company 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 25,000 in respect of costs and expenses.

Today's judgment concerned the question of the application of Article 41 (just satisfaction) of the Convention with regard to pecuniary damage.

Just satisfaction: Taking note of the friendly settlement reached between the Italian Government and the applicant company, the Court decided to strike the application out of its list of cases insofar as the proceedings regarding Article 41 were concerned.

Upīte v. Latvia (no. 7636/08)

The applicant, Ženija Upīte, is a Latvian national who was born in 1945 and lives in Riga. The case concerned her objection to a judge reviewing a civil case she had brought because he was under inquiry in a scandal involving the judiciary.

In the summer of 2007 there was a telephone tapping scandal in Latvia concerning allegedly unlawful and unethical behaviour in the judiciary. In particular, a book was published containing transcripts between lawyers from a well-known Latvian law firm and judges working in various courts. An inquiry was thus carried out by a working group set up by the Supreme Court.

In the meantime, in 2004 Ms Upīte had brought civil proceedings against a third party. In 2007, when the scandal broke out, her appeal on points of law in these proceedings was pending before the Senate of the Supreme Court, acting as a court of cassation. At the cassation hearing on 29 August 2007 her lawyer raised objections as to one of the three judges sitting on the panel as he was one of those being assessed at the time in the inquiry into allegedly unethical behaviour in the judiciary. On the same day these doubts were dismissed by the other two judges on the panel as they found that they were only based on an assumption and the dismissal of Ms Upīte's civil claim was upheld.

In November 2007 two of the 15 judges assessed during the inquiry were identified in a report as having violated the Code of Ethics of Judges: the judge reviewing Ms Upīte's case was not one of those identified.

Relying on Article 6 § 1 (right to a fair hearing), Ms Upīte alleged that one of the judges reviewing her case had not been impartial because he was under inquiry for unethical behaviour at the time.

No violation of Article 6

V.M. v. the United Kingdom (no. 49734/12)

The case concerned the complaint by a mentally-ill woman about her immigration detention pending deportation.

The applicant, Ms V.M., is a Nigerian national who was born in 1977 and lives in West Drayton (England, UK).

Ms V.M. entered the United Kingdom illegally on 18 November 2003 with her son. In November 2003 her son was admitted to hospital with serious injuries and then taken into care. Ms V.M. was later charged with child cruelty and convicted on 7 April 2008. Due to the seriousness of her offences, the Crown Court judge recommended deportation. Ms V.M thus remained in detention when her criminal sentence ended on 8 August 2008.

In the following three years, until her release on bail in July 2011, Ms V.M. brought a number of proceedings challenging the decision to deport her. In December 2008, the immigration authorities dismissed her appeal against her deportation. In June 2009, she also requested the decision to deport be reversed or that her representations be treated as a fresh asylum claim, referring to her poor mental health (recurrent depression and a personality disorder) and the poor standard of treatment facilities in Nigeria if she were deported. Five months later the Secretary of State refused to treat those representations as a fresh claim for asylum. Permission to apply for judicial review was granted in May 2010 and a hearing took place in July 2010: both the Court of Appeal and the Administrative Court concluded that, in view of the serious risk of Ms V.M. absconding, reoffending or harming herself or others, she would have been detained lawfully during the period between August 2008 and April 2010 even if the policy to favour alternatives to immigration detention for the mentally ill had been considered. Ms V.M.'s bail applications were also rejected on similar grounds.

During her detention, Ms V.M. had ongoing medical assessments and, by March 2010, the assessments noted that her mental health had significantly deteriorated. However, the courts reviewed all of the medical evidence in their decisions on Ms V.M.'s case and concluded that the authorities' decision not to transfer her to hospital had been reasonable.

Relying in particular on Article 5 § 1 (right to liberty and security), Ms V.M. complained about the excessive length of her detention as well as the system of immigration detention in the UK, notably alleging that the time-limits on the maximum period of immigration detention were unclear and that there was no automatic judicial review. She also complained that her detention from August 2008 (when her criminal sentence ended) to July 2010 (when her first application for judicial review was heard) had not been lawful as it had breached the policy on mentally-ill immigration detainees.

Violation of Article 5 § 1 – in respect of the period of Ms V.M.'s immigration detention between 19 June and 14 December 2009

Just satisfaction: 3,500 euros (EUR) (non-pecuniary damage) and EUR 10,000 (costs and expenses)

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