



Judgments and decisions of 22 October 2020

The European Court of Human Rights has today notified in writing 16 judgments¹ and 66 decisions²: six Chamber judgments are summarised below;

separate press releases have been issued for two decisions in the cases of *Faller and Steinmetz v. France* (nos. 59389/16 and 59392/16) and *Maris v. Romania* (no. 58208/14);

ten Committee judgments, concerning issues which have already been submitted to the Court, and the 64 other decisions, can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments summarised below are available only in English.

Artashes Antonyan v. Armenia (application no. 24313/10)

The applicant, Artashes Antonyan, is an Armenian national who was born in 1954 and lives in Kajaran (Armenia).

The case concerned the applicant's complaint about the fine imposed on him for a breach of customs regulations.

On 30 July 2008, following an inspection of the company for whom the applicant was working, the customs authorities issued a document stating that he had filed inaccurate declarations as regards the price of certain imported goods. He was as a result fined in administrative proceedings initiated against him on 17 October 2008.

He contested the decision in the administrative courts, arguing that it was in breach of Article 37 of the Code of Administrative Offences (CAO) which provided that a penalty for a breach of customs regulations had to be imposed within two months of the date on which the offence had been discovered. As the inspection had been carried out in July 2008, the deadline for imposing the fine had expired at the end of September 2008.

The Administrative Court dismissed his claim in August 2009, ruling that his offence had been discovered on 17 October 2008, namely the date when the record of the breach of customs regulations had been drawn up. The applicant's appeal on points of law was subsequently declared inadmissible for lack of merit.

In the enforcement proceedings the applicant's employer withheld 50% of his salary from June 2011 to April 2012, and several flats he owned were seized and sold by the authorities.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, the applicant complained that the imposition of the fine had been unlawful, in particular because it had been in breach of the two-month prescription period set down in the CAO.

Violation of Article 1 of Protocol No. 1

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a 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.

Just satisfaction: 20,800 euros (EUR) (pecuniary damage), EUR 3,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

Ghavalayan v. Armenia (no. 50423/08)

The applicant, Anush Ghavalayan, now deceased, was an Armenian national who was born in 1972 and lived in Yerevan.

The case concerned several complaints related to her detention on tax evasion charges.

The applicant, who worked as a cashier at a catering company, was arrested in March 2008 on suspicion of tax evasion and taken into custody. The courts first ordered her detention for 20 days, then – despite her appeals – repeatedly extended it, essentially because of the risk of her absconding or obstructing the investigation. She was ultimately released on bail in November 2008 during the trial court's examination of her case.

Relying on Article 5 § 3 (right to liberty and security) of the European Convention, the applicant complained that the courts had failed to properly justify her continued detention. She also raised several complaints under Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) alleging: that the Criminal Court of Appeal had failed to examine speedily one of her appeals, dated 13 June 2008, against a court order extending her detention and eventually had refused to examine it, leaving it to the trial court to decide; that her lawyers had not been notified of two hearings to examine the extension of her detention in April 2008, in breach of the principle of equality of arms; and, that the Court of Cassation had failed to speedily examine her appeals on points of law against decisions extending her detention, eventually refusing to examine her appeal of April 2008.

Violation of Article 5 § 3

Violation of Article 5 § 4

Just satisfaction: EUR 3,000 (non-pecuniary damage) and EUR 161 (costs and expenses)

Norik Poghosyan v. Armenia (no. 63106/12)

The applicant, Norik Poghosyan, is an Armenian national who was born in 1983 and lives in the village of Metsavan (Armenia).

The case concerned the right to compensation under Armenian law for unlawful detention.

Mr Poghosyan was detained from October 2008 on drug-related charges. He was found guilty as charged in October 2009 and sentenced to three years' imprisonment. He was released in April 2010 after serving his sentence.

In the meantime, however, the judgments convicting him had been quashed, the appeal court ruling that the evidence used against the applicant had been obtained in breach of his right to defence. The case was remitted for fresh examination and the applicant was acquitted in October 2010.

He lodged a civil claim for compensation in July 2011, arguing that his acquittal rendered unlawful the time he had spent in detention. The civil courts allowed his claim for pecuniary damage, but not for non-pecuniary damage because such compensation was not provided for under domestic law.

Relying on Article 5 § 5 (enforceable right to compensation), Mr Poghosyan complained that he had been denied compensation for non-pecuniary damage for his unlawful detention.

Violation of Article 5 § 5

Just satisfaction: EUR 6,000 (non-pecuniary damage)

Bokhonko v. Georgia (no. 6739/11)

The applicant, Orest Bokhonko, is a Ukrainian national who is currently serving a 23-year prison sentence in Georgia for drugs offences.

The case concerned his allegation that he had been subjected to police abuse during his arrest, in particular a strip search and anal inspections.

According to the official version of events, Mr Bokhonko was arrested on 27 September 2008 at Tbilisi airport following a police tip-off that he was attempting to transport illegal drugs into the country. A body search was conducted and a yellow balloon containing a white substance, later identified as methadone, was extracted from his anus.

He was subsequently formally charged with unlawful possession and transportation of a large quantity of drugs and a judge ordered his pre-trial detention.

On being questioned by the investigating authorities and throughout the ensuing proceedings, the applicant protested his innocence, alleging that the drugs had been planted by the police. He submitted that he had been beaten, forced to strip naked and do sit-ups, while the officers filmed him with their mobile phones. He also alleged that he had been subjected to two anal inspections by a police officer and had been told that drugs had been found on him when regaining consciousness after fainting during the second anal inspection.

He was convicted as charged in June 2009, a decision which was upheld on appeal in February 2010. The courts essentially relied on the drugs seized and the witness statements of the three police officers and the interpreter present during the search. They confirmed their pre-trial statements denying any ill-treatment, adding that an officer had been able to retrieve the yellow balloon by pulling on a piece of string which had emerged during a sit-up. The courts dismissed the applicant's allegations of ill-treatment and procedural irregularities as unsubstantiated.

In the meantime, the applicant's requests to the investigating and prison authorities to have a medical examination had been refused, while his request to the prosecutor's office to initiate criminal proceedings against the arresting police officers had been rejected on 17 October 2008.

An investigation for abuse of power, launched in 2013 by the prosecutor's office, is currently ongoing.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 6 §§ 1 and 3 (e) (right to a fair trial), the applicant complained in particular about the manner in which he had been arrested and strip searched; the failure of the authorities to conduct an investigation in that regard; the unfairness of the criminal proceedings conducted against him owing to the domestic courts' use of evidence obtained as a result of ill-treatment and/or planted evidence; and the failure to provide him with adequate interpreting services throughout the criminal proceedings.

Violation of Article 3 (investigation)

No violation of Article 3 (ill-treatment)

Violation of Article 6 § 1

No violation of Article 6 §§ 1 and 3 (e)

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

Roth v. Germany (nos. 6780/18 and 30776/18)

The applicant, Peter Roth, is a German national who was born in 1960 and is currently serving a sentence in Straubing Prison (Germany).

The case concerned the applicant's complaint about repeated random strip searches in prison and the domestic courts' refusal to grant him compensation for non-pecuniary damage.

Random searches used to be carried out in Straubing Prison of one in five prisoners, without exception, before or after their receiving visitors. Such searches involved prisoners having to completely undress, and bend down for an inspection of their anus. In November 2016 the Federal Constitutional Court ruled that the practice was unconstitutional.

Mr Roth brought several sets of proceedings in the criminal courts about strip searches he had had to undergo. In 2016 and 2017 the courts acknowledged that certain searches had been unlawful.

However, when he requested legal aid in order to bring official liability proceedings, the courts considered that the decisions finding the searches unlawful constituted sufficient redress, making monetary compensation unnecessary. They therefore found that bringing liability proceedings would not have sufficient prospects of success and dismissed his requests for legal aid.

Mr Roth complained that the repeated strip searches had breached his rights under Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy).

Violation of Article 3

Violation of Article 13 in conjunction with article 3

Just satisfaction: EUR 12,000 (non-pecuniary damage) and EUR 770.53 (costs and expenses)

Melnikov v. Ukraine (no. 66753/11)

The applicant, Valeriy Melnikov, was born in 1967 and is currently serving a life sentence.

The case concerned criminal proceedings brought against him in connection with organised crime.

He was arrested in June 2002 on suspicion of kidnapping for ransom and a number of other offences. Eventually some of the charges against him were severed in a separate set of criminal proceedings. In May 2010 the applicant was found guilty of, among other things, double murder for profit and kidnapping. That judgment was upheld in April 2011. Subsequently, in January 2012, he was also found guilty in another set of criminal proceedings of banditry, eleven counts of murder for profit and numerous counts of kidnapping for ransom, extortion, robbery, theft, police impersonation and illegal arms possession.

He was sentenced to 15 years' imprisonment in the first set of proceedings and life imprisonment in the second set of proceedings. The courts set off the almost eight years he had spent in pre-trial detention against the life sentence, refusing to count it towards his 15-year prison sentence, despite his appeal on points of law in that regard.

Relying in particular on Article 6 § 1 (right to a fair trial within a reasonable time) Mr Melnikov alleged that the length of the criminal proceedings against him had been unreasonable.

Violation of Article 6 § 1

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

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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.