EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

Chamber judgments concerning
Austria, Greece, Italy, Lithuania, Malta, Romania and Russia[1]

The European Court of Human Rights has today notified in writing the following 13 Chamber judgments, of which only the friendly-settlement judgments are final.[2]

Violation of Article 6 § 1
Jancikova v. Austria (application no 56483/00) ***Violation of Article 13***
The applicant, Helena Jancikova, is an Austria national, born in 1961 and living in Vienna.

She complained under Article 6 (right to a fair hearing within a reasonable time) of the European Convention on Human Rights about the length of the administrative criminal proceedings against her concerning the employment of four foreigners without work permits. She also relied on Article 13 (right to an effective remedy).

The European Court of Human Rights noted that the proceedings in question had lasted almost six years and eight months. Having regard to the circumstances of the case, it considered that such a length of time was excessive and failed to satisfy the "reasonable time" requirement. Accordingly, the Court concluded unanimously that there had been a violation of Article 6 § 1 of the Convention. It also concluded unanimously that there had been a violation of Article 13.

Under Article 41 (just satisfaction), the European Court of Human Rights awarded the applicant 3,000 euros (EUR) for costs and expenses. (The judgment is available only in English).

The European Court of Human Rights held unanimously that there had been a violation of Article 6 § 1 and Article 13 of the Convention on Human Rights and awarded the applicant 3,000 euros (EUR) for costs and expenses. (The judgment is available only in English.)

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[1] These summaries by the Registry do not bind the Court.
[2] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Violation of Article 6 § 1

Alija v. Greece (no. 73717/01)
Dimitrellos v. Greece (no. 75483/01)

Alija v. Greece
Aggim Alija is an Albanian national who was born in 1969 and lives in Thessalonica (Greece).

He was prosecuted for armed robbery and spent 13 months in pre-trial detention in Greece before being acquitted on 11 February 1998. He brought an unsuccessful claim seeking compensation for the time he had spent in prison. The Thessalonica Court of Appeal dismissed his claim on the ground that there had been serious evidence against him when he had been placed in detention. The applicant asked the public prosecutor at the Court of Cassation to lodge an appeal against the judgment but, in a handwritten sentence appearing on the applicant's request itself, the public prosecutor considered "that there were no grounds for lodging an appeal on points of law".

Dimitrellos v. Greece
Dimitrios Dimitrellos is a Greek national who was born in 1932 and lives in Kallithea (Greece).

Criminal proceedings were brought against the applicant, a lawyer, on a charge of having deliberately included erroneous information in contracts of sale. After spending almost a year in pre-trial detention, he was acquitted on 26 June 2000 by the Criminal Court of Appeal, which held that it was unnecessary to compensate him for the time he had spent in detention on the ground that "the facts in question constituted serious evidence of his guilt".

Relying on Article 6 § 1 of the Convention (right to a fair trial), both applicants alleged that the judgments dismissing their claims for compensation in respect of the time spent in pre-trial detention, and the public prosecutor's decision regarding Mr Alija, contained insufficient or no reasons.

Regarding the lack of reasons for the public prosecutor's decision in the ***Alija v. Greece*** case, the Court noted that the fact of having to reply to the applicant's request was not a matter for the public prosecutor's discretion. Under Article 139 of the Code of Criminal Procedure (CCP), he was supposed to reply to it giving reasons.

The Court noted in these two cases that the courts of appeal concerned had dismissed the applicants' claims for compensation on the sole ground that, when they were placed in detention, there had been serious evidence of their guilt, thus merely reiterating the terms of Article 533 § 2 of the CCP. Moreover, the lack of any reasons for the public prosecutor's decision to dismiss Mr Alija's request was liable to render that decision arbitrary since it was decisive for his right to appeal to the Court of Cassation.

After reiterating that it had already criticised the practice of the Greek trial and appeal courts of dismissing claims for compensation without giving sufficient reasons, the Court held unanimously in both these cases that there had been a violation of Article 6 § 1. It awarded the applicants EUR 10,000 each for pecuniary and non-pecuniary damage. (The judgments are available only in French).

Jarnevic and Profit v. Greece (no. 28338/02) ***Violations of Article 6 § 1***
The applicants, Denise Jarnevic and Jean-Louis Profit, together with their daughter Audray Profit, are French nationals, who were born in 1953, 1943 and 1988 respectively. They live in Aghia Fotia, Lasithi (Greece).

Their daughter was injured as a result of the accidental collapse of a pile of stones, located in the courtyard of a taverna. The applicants lodged a criminal complaint for severe bodily harm and injury arising from negligence and applied to join the proceedings as a civil party. They also brought an action for compensation.

The applicants complained under Article 6 § 1 (right to a fair hearing within a reasonable time) of the length and unfairness of the criminal proceedings brought against the taverna's tenants and their associate. They also complained of the length of the civil proceedings which they had brought in order to obtain damages.

The Court declared the application admissible only regarding the complaint based on the excessive length of the proceedings. It noted that the criminal proceedings had lasted seven years and 21 days for four levels of jurisdiction and that the civil proceedings has lasted six years and about four months to date for one level of jurisdiction. Having regard to the circumstances of the case, the Court considered that such periods did not satisfy the "reasonable time" requirement of Article 6 § 1. Accordingly, it concluded that there had been a violation of Article 6 § 1 on account of the excessive length of the criminal and civil proceedings.

Although the Court registry had drawn their attention to this point, the applicants did not submit any written observation in respect of Article 41 (just satisfaction). Accordingly, the Court did not consider it necessary to award them a sum of money under that head. (The judgment is available only in French).

Brocco v. Italy (no. 68074/01)
Del Duce v. Italy (no. 65674/01)
Sferrazzo and Papini v. Italy (no. 69308/01) ***Friendly settlement***
The applicants are: Roberto and Paolo Brocco, two Italian nationals, who were respectively born in 1963 and 1959 and live in Rome; Giovanni Del Duce, an Italian national who was born in 1937 and lives in Rome; and, Renato Sferrazzo and Paola Papini, two Italian nationals, who were respectively born in 1948 and 1950 and live in Florence.

In these three cases, the applicants complained, under Article 1 of Protocol No. 1 (protection of property), that they were unable to recover possession of their flats within a reasonable time. Under Article 6 § 1 (right to a fair hearing within a reasonable time), they further complained about the length of the eviction proceedings.

The cases have been struck out following a friendly settlement in which a sum totalling EUR 12,000 is to be paid to Roberto and Paolo Brocco; EUR 6,085 is to be paid to Giovanni Del Duce and EUR 10,000 is to be paid to Renato Sferrazzo and Paola Papini for both pecuniary and non-pecuniary damage and for costs and expenses. (The judgments are available only in English.)

Violation of Article 3
Violations of Article 5 § 1
Karalevičius v. Lithuania (no. 53254/99) ***Violation of Article 8***

The applicant, Vytautas Karalevičius, is a Lithuanian national who was born in 1952 and lives in Vilnius (Lithuania).

On 31 December 1996 Šiauliai City District Court ordered his detention on remand. He was convicted of forgery and suppressing documents on 10 September 1998 and sentenced to five years' imprisonment. He appealed. On 24 October 2000 the Supreme Court reduced the sentence to three years' imprisonment.

From 2 January 1997 to 22 September 1999 the applicant had been held at the Šiauliai Remand Prison (*Šiaulių tardymo izoliatorius*), where, he alleged, he had lived and slept in cells of less than 20 square metres with 10 to 15 inmates, there had been an open toilet in each cell; the cells had lacked ventilation and been humid and cold; only one hour's outside exercise had been permitted per day; there had been a constant lack of hot and cold water; and the applicant had had access to a shower only once in 15 days.

The applicant complained that the conditions of his detention at the Šiauliai Remand Prison had been contrary to Article 3 (prohibition of inhuman or degrading treatment or punishment). He complained that certain periods of his detention on remand had been incompatible with Article 5 § 1 (right to liberty and security) and that, contrary to Article 8 (right to respect for correspondence), the Šiauliai Remand Prison administration had opened his correspondence with the European Commission and Court of Human Rights.

The Court observed that for more than three years and one month the applicant had been held in the Šiauliai Remand Prison which, according to the Lithuanian Government, was 100% overcrowded by relevant domestic standards. The applicant had spent most of that time in space of less than two square metres and for more than a year and a half had lived in an area of 1.51 square metres in a cell of 16.65 square metres together with 10 other inmates. The Court considered it established that the applicant had been confined to his cell for 23 hours daily.

In the Court's opinion, the fact of the applicant being obliged to live, sleep and use the toilet in the same cell with so many other inmates had itself been sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

Although it had not been established that the ventilation, heating, lighting and sanitary facilities at the Šiauliai Remand Prison were unacceptable under Article 3 of the Convention, the Court noted the Government's admission that no toilet paper had been given to the inmates during the whole of the applicant's stay there, that until 1999-2000 the possibility to use the bath had been restricted to less than once a week, and that until 2000 no adequate facilities had existed for laundry of the inmates' belongings and bedding. Although those factors alone did not justify being regarded as degrading treatment, when added to the serious overcrowding problem they showed that the applicant's conditions of detention had not been compatible with Article 3. Consequently, the Court concluded that the applicant's detention amounted to degrading treatment contrary to Article 3 of the Convention.

With regard to the applicant's periods of detention, the Court identified three: from 13 June to 6 August 1997 no order had been made by a judge authorising the applicant's detention under Articles 10 and 104-1 of the Code of Criminal Procedure as then in force. The applicant's detention during that period had therefore been unlawful and the Court concluded unanimously that there had been a violation of Article 5 § 1.

With regard to the period of detention from 29 June to 30 July 1999 the Court observed that the applicant's conviction had been quashed by the Supreme Court on 29 June 1999 but no court order authorising the applicant's remand had been made until 30 July 1999. The applicant's detention during that period had therefore not been lawful and the Court concluded unanimously that there had been a violation of Article 5 § 1.

The detention from 15 November to 30 December 1999 had been covered by a valid court order. Accordingly, the Court concluded that there had not been a violation of Article 5 § 1 regarding that period.

Lastly, the Court noted that the Government had not denied that all of Mr Karalevičius's correspondence with the Convention institutions had been opened by the prison administration. Accordingly, it concluded unanimously that there had been a violation of Article 8 of the Convention.

Under Article 41 of the Convention (just satisfaction) the Court awarded Mr Karalevičius EUR 12,000 for non-pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in English.)

Violation of Article 14 taken in conjunction with Article 8

Rainys and Gasparavičius v. Lithuania (nos. 70665/01 and 74345/01).
The applicants, Raimundas Rainys and Antanas Gasparavičius, are two Lithuanian nationals, who were respectively born in 1949 and 1945 and live in Vilnius and Kretinga (Lithuania).

From 1975 to October 1991 Mr Rainys was employed by the Lithuanian branch of the Soviet Security Service (the KGB). He then worked as a lawyer in a private telecommunications company. On 23 February 2000 he was dismissed from his job after being found to have the status of a "former KGB officer" as defined by Article 2 of the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Permanent Employees of the Organisation ("the Act"). He appealed unsuccessfully and has been unemployed ever since.

From 1971 until October 1991 Mr Gasparavičius worked for the KGB. He then started practising as a barrister. On an unspecified date in 2000 he was found to have the status of a "former KGB officer". He appealed unsuccessfully and, on 29 May 2001, was disbarred. He now works in the business sector.

The applicants complained that the loss of their jobs and the ban on their finding employment in various private-sector spheres until 2009 breached Article 8 (right to respect for private life), Article 14 (prohibition of discrimination) and Article 10 (right to freedom of expression).

The Court noted that the applicants' complaints were very similar to those raised in the case ***Sidabras and Džiautas v. Lithuania***, albeit wider: they related not only to their hypothetical inability to apply for various private-sector jobs until 2009, but also their actual dismissal

from existing employment in that sector. Nevertheless, that extra element did not prompt the Court to depart from the reasoning developed in ***Sidabras and Džiautas***.

The Court emphasised that the State-imposed restrictions on a person's opportunity to find employment with a private company for reasons of lack of loyalty to the State could not be justified from the Convention perspective in the same manner as restrictions on access to their employment in the public service. Moreover, the very belated nature of the Act, imposing the impugned employment restrictions on the applicants a decade after Lithuanian independence had been re-established and the applicants' KGB employment had been terminated, counted strongly in favour of a finding that the application of the Act vis-à-vis the applicants amounted to a discriminatory measure.

The Court therefore held, unanimously, that there had been a violation of Article 14, in conjunction with Article 8, to the extent that the Act precluded those applicants from employment in the private sector on the basis of their "former KGB officers" status under the Act. The Court further considered that, since it had found a breach of Article 14 taken in conjunction with Article 8, it was not necessary also to consider whether there had been a violation of Article 8 taken alone.

The Court found no violation of Article 10 (freedom of expression) taken in conjunction with Article 14.

Under Article 41 (just satisfaction), the Court awarded Mr Rainys and Mr Gasparavičius EUR 35,000 and EUR 7,500 respectively for pecuniary damage, EUR 5,000 each for non-pecuniary damage and EUR 4,000 jointly for costs and expenses. (The judgment is available only in English.)

No violation of Article 6
No violation of Article 1 of Protocol No. 1

Užkurėlienė and Others v. Lithuania (no. 62988/00)
The applicants, Eugenija Užkurėlienė, Povilas Čyžius, Stanislovas Čyžius and Janina Čyžiutė, are four Lithuanian nationals who were born in 1939, 1936, 1938 and 1932 and live in Vilnius, Kupiškis, Panevėžys and Kupiškis (Lithuania) respectively.

They brought legal proceedings seeking restitution of land that had belonged to their father. In a judgment of 22 May 2000, the Supreme Court ordered that their right to this land was to be restored by returning the land in question to the applicants or by allotting them other land or financial compensation. Since full restitution was impossible, the relevant authorities twice proposed other plots of land in compensation. Some of the applicants failed to reply to those proposals.

The applicants alleged, in particular, that the non-execution of the Supreme Court judgment had breached Article 6 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property).

Having regard to the circumstances of the case, the Court considered that the Lithuanian authorities could not be accused of having failed to comply with the judgment of 22 May 2000. It noted that the authorities had offered to allot the applicants another plot of land on 20 March 2002 and 19 July 2004, in view of the fact that it was impossible to restore all of the

disputed land. On account of the applicants' conduct, among other things, the Court considered that the time taken to execute the judgment of 22 May 2000 had not breached the right of access to a court. Consequently, it concluded unanimously that there had been no violation of Article 6 § 1.

In view of the fact that the authorities had duly exercised their discretion in executing the Supreme Court's judgment within a period that had not violated the applicants' right to a court, the Court held that there had been no interference with their property rights. Accordingly, it concluded unanimously that there had been no violation of Article 1 of Protocol No. 1. (The judgment is available only in English).

Violation of Article 5 § 3

Calleja v. Malta (no. 75274/01) ***Violation of Article 6 § 1***

The applicant, Meinrad Calleja, is a Maltese national who was born in 1961 and is currently detained in Corradino Prison (Malta).

In November 1995 he was arrested and charged with trafficking in dangerous drugs. On 15 May 1996 he was also charged with aiding and abetting the attempted murder of the Prime Minister's personal assistant, Richard Cachia Caruana.

On 4 April 2001 he was convicted and sentenced to 15 years' imprisonment and fined 30,000 Maltese liras (approximately EUR 72,273) for trafficking in dangerous drugs. On 1 February 2004 he was found not guilty of aiding and abetting attempted murder.

The applicant complained about the length of his pre-trial detention and the proceedings brought against him for aiding and abetting murder, relying on Article 5 § 3 (right to liberty and security) and Article 6 § 1 (right to a fair trial within a reasonable time).

The Court noted that the applicant had been held in pre-trial detention for four years, ten months and 20 days. The Court considered that sufficient evidence had been brought against him to enable the Maltese courts to have a reasonable suspicion that he had been involved in an attempted murder. Since such suspicions could not in themselves justify a long period of pre-trial detention, the Court examined the other reasons given to justify the applicant's continued detention. It considered that they had been reasonable, at least initially. However, with the passing of time the risks alleged had diminished. Furthermore, the Court found that the authorities had failed to exercise the requisite diligence in the conduct of this case.

In those circumstances, the Court found that the reasons given for Mr Calleja's continued detention had not been sufficient to justify his being kept in detention for such a period, and accordingly concluded unanimously that there had been a violation of Article 5 § 3.

As to the length of the proceedings, they had lasted seven years, eight months and 17 days. Having regard to the circumstances of the case, the Court considered that this period was excessive and failed to meet the "reasonable time" requirement. Accordingly, it concluded unanimously that there had been a violation of Article 6 § 1 of the Convention.

Under Article 41 (just satisfaction), the Court awarded Mr Calleja EUR 5,000 for non-pecuniary damage and EUR 4,832 EUR for costs and expenses. (The judgment is available only in English).

Violation of Article 6 § 1

Dragne and Others v. Romania (no. 78047/01) ***Violation of Article 1 of Protocol No. 1***

The six applicants, Filofteia Dragne, Smaranda Branescu, Smaranda Matei, Maria Neagoe, Iulia Orban and Vasile Galbeneanu, are Romanian nationals who were born in 1940, 1942, 1947, 1933, 1938 and 1936 respectively. They live in Piteşti, Voineşti, Câmpulung Muscel, Movileni and Călimăneşti (Romania).

The applicants brought proceedings to recover land of 33.5 hectares they had inherited from their father. In a final judgment of 28 June 1995 the Olt County Court found in their favour and ordered their property title to be reconstituted. In a judgment of 8 January 1996 the court ordered the Commission for the application of the Land Act (Law no. 18/1991) to give the applicants possession of the land. Furthermore, in a judgment of 10 November 1997 the applicants were awarded compensation of 97 million Romanian lei for the loss sustained as a result of being unable to farm the land in question.

Despite the steps taken by the applicants, those decisions have still not been enforced.

The applicants alleged that the authorities' failure to enforce the final judicial decisions ordering the restitution of the property had infringed their right of access to a court and their right to peaceful enjoyment of their possessions. They relied on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property).

The Court found that in refusing to enforce the final judicial decisions ordering the applicants to be given possession of the land and awarding them damages, the national authorities had deprived them of effective access to a court. It held accordingly, by six votes to one, that there had been a violation of Article 6 § 1 of the Convention.

The Court also found that the applicants owned a possession within the meaning of the Convention. As the Romanian Government had given no valid explanation for the interference with the applicants' property right as a result of the failure to enforce the judicial decisions, the Court found that the interference had therefore been arbitrary and had resulted in a breach of the requirement of lawfulness.

With regard to the payment of the damages awarded in November 1997, although the sum in question had been definitively fixed by the courts, it had still not been paid to the applicants.

In those circumstances the Court held, by six votes to one, that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

The Court found that the question of just satisfaction was not ready for decision and therefore reserved it. It awarded the applicants EUR 20 for costs and expenses incurred in the domestic courts. (The judgment is available only in French).

Violation of Article 5 § 3
No violation of Article 5 § 4
Rokhlina v. Russia (no. 54071/00) ***Violation of Article 6 § 1***

The applicant, Tamara Pavlovna Rokhlina, is a Russian national who was born in 1949 and lives in Moscow.

On 3 July 1998 she was arrested on suspicion of shooting her husband, Lieutenant-General Lev Rokhlin, a member of the Russian parliament. She was detained on remand until 30 December 1999. On 16 November 2000 she was convicted of murder, but the judgment was quashed by the Supreme Court on 7 June 2001 and the case remitted to the trial court, before which it is still pending.

She complained about the length of her detention on remand, about delays in dealing with her appeals against detention and about the length of her trial. She relied on Article 5 § 3 (right to be tried within a reasonable time or released pending trial) of the Convention, Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) and Article 6 § 1 (right to a fair hearing within a reasonable time).

On the Article 5 § 3 complaint, the Court noted that any system of mandatory detention on remand was *per se* incompatible with Article 5 § 3 of the Convention. It was incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty. Shifting the burden of proof to the detained person in such matters was tantamount to overturning the rule of Article 5 of the Convention, a provision which made detention an exceptional departure from the right to liberty and one that was only permissible in exhaustively enumerated and strictly defined cases.

In the case under review the Court found that the decisions of the domestic courts had not been based on an analysis of all pertinent facts and that by failing to address concrete relevant facts and by relying solely on the gravity of the charges and shifting to the accused the burden of proving that there was not even a hypothetical danger of absconding, re-offending or collusion, the authorities had prolonged the applicant's detention on grounds which could not be regarded as "sufficient". They had thus failed to justify the applicant's continued detention on remand during the period under consideration and there had therefore been a violation of Article 5 § 3 of the Convention.

Under Article 5 § 4 the Court found that the global duration of the relevant proceedings contesting the lawfulness of the applicant's detention had been approximately one month and ten days (from 15 October to 25 November 1999). During that time the lawfulness of the detention order had been examined on two levels of jurisdiction and the hearings had been held, where possible, within the domestic time-limits. In those circumstances, the Court found that there had been no violation of Article 5 § 4 of the Convention as regards the "speediness" of review afforded by the domestic courts.

In respect of Article 6 § 1, the period to be taken into consideration had lasted so far approximately six years and one month. The Court considered that this did not satisfy the "reasonable time" requirement and there had therefore been a breach of that provision.

In conclusion the Court held unanimously that there had been a violation of Article 5 § 3 and Article 6 § 1 of the Convention, but no violation of Article 5 § 4. The applicant was awarded EUR 8,000 for non-pecuniary damage. (The judgment is available only in English.)

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The full texts of the Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.*