



Judgments and decisions of 7 December 2017

The European Court of Human Rights has today notified in writing ten judgments¹ and 38 decisions²: five Chamber judgments are summarised below;

a separate press release has been issued for one decision, in the case of *P. Plaisier B.V. and Others v. the Netherlands* (nos. 46184/16, 47789/16, and 19958/17);

five Committee judgments, concerning issues which have already been submitted to the Court, and the 37 other decisions, can be consulted on [Hudoc](#) and do not appear in this press release.

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

D.L. v. Austria (application no. 34999/16)

The applicant, Mr D.L., is a Serbian national who was born in 1973, and has been living in Austria since 2001. He is currently in detention pending extradition at Vienna-Josefstadt Prison (Austria). The case concerned the proceedings for his extradition from Austria to Kosovo.

Suspected of aggravated murder, he was arrested and taken into detention pending extradition in Austria in January 2016 on the basis of an international arrest warrant issued by the Kosovo authorities. He had allegedly ordered the murder of his former brother-in-law, but one of the latter's cousins had been killed by mistake.

There ensued three rounds of proceedings concerning Mr D.L.'s extradition. In those proceedings he notably claimed that his life was in danger in Kosovo because of a blood feud with his brother-in-law's clan, which the Kosovo authorities were either not willing or able to protect him from. He also alleged that detention conditions in Kosovo were deplorable, and in particular that ill-treatment by the police and prison officers, inter-prisoner violence and corruption were rife.

After having examined Mr D.L.'s claims, the courts found that his extradition was permissible. They notably found that the brother-in-law's clan could not be that influential in Kosovo, as certain of its members were themselves imprisoned in Kosovo; indeed the brother-in-law had been convicted in Kosovo in 2008 for threatening Mr D.L. They also took into account a sworn statement by the accused hired murderer who alleged that he had been pressured by the police into blaming Mr D.L. for ordering the murder. However, they found that this statement did not dispel the suspicion against Mr D.L. on which the extradition order was based.

Mr D.L.'s extradition has in the meantime been stayed on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Austrian Government that he should not be extradited for the duration of the proceedings before it.

Relying on Article 2 (right to life) and Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, Mr D.L. alleged that he would be at great

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.

risk if extradited to Kosovo. Relying on international reports in particular, he claimed that the Kosovo authorities would not protect him from his brother-in-law's clan or ill-treatment at Mitrovica prison where he alleged that he would most likely be held.

No violation of Articles 2 and 3 – in the event of Mr D.L.'s extradition to Kosovo

Interim measure (Rule 39 of the Rules of Court) – not to extradite Mr D.L. – still in force until judgment becomes final or until further order.

S.F. and Others v. Bulgaria (no. 8138/16)

The case concerned a complaint brought by an Iraqi family about the conditions in which they had been kept in immigration detention for a few days when trying to cross Bulgaria on their way to Western Europe in 2015. They now live in Switzerland, where they were granted asylum in July 2017.

In August 2015 the applicants, an Iraqi couple and their three sons, who had fled Iraq, tried to pass covertly through Bulgaria in order to seek international protection in Western Europe. They were however intercepted near the Bulgarian-Serbian border on 17 August and arrested because they had not entered the country lawfully. They were then kept in immigration detention in a short-term holding facility in Vidin pending their transfer on 19 August to a bigger immigration detention facility in Sofia. On 31 August 2015 they settled in an open facility for asylum-seekers. Shortly afterwards, they left this facility and made their way to Switzerland.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, the applicants complained in particular about the conditions in which the three minors – then aged 16, 11 and one and a half years – had been kept in the detention facility in Vidin. Submitting a video recording, the applicants alleged in particular that the cell in which they had been held had been extremely run-down, with dirty and worn out bunk beds, mattresses and bed linen as well as litter and damp cardboard on the floor; and that, as there had been no toilet in the cell, they had had to urinate on the floor. They also complained that the authorities had failed to provide them with food and drink for the first 24 hours of their custody and that the baby bottle and milk of the youngest child had been taken away upon their arrival at the facility and only given to the mother 19 hours later.

Violation of Article 3 (inhuman and degrading treatment) – in respect of the three children (Y.F., S.F. and A.F.)

Just satisfaction: 600 euros (EUR) each to Y.F., S.F. and A.F. (non-pecuniary damage), and EUR 1,000 to the applicants jointly (costs and expenses)

Yonchev v. Bulgaria (no. 12504/09)

The applicant, Ivan Yonchev, is a Bulgarian national who was born in 1954 and lives in Sofia. A former police officer, he complained about the authorities' refusal to let him have access to a file assessing him as unfit to work.

Employed as a police officer since 1977, Mr Yonchev participated in several international missions. In 2001 he applied for a position in a new mission. However, following two psychological assessments, he was told that he was unfit for the job.

In 2003 he applied under the Protection of Personal Data Act to have access to his personnel file at the Ministry of the Interior. Mr Yonchev's request was refused, first in administrative and then in judicial proceedings. In particular, the Minister of the Interior refused access in 2006 on the ground that his whole personnel file was classified; and that even if the file did contain documents which were not sensitive, owing to the presence of some classified documents, the whole file had to be protected. This decision was then ultimately upheld by the national courts in 2008.

In the meantime, in view of the negative outcome of the first psychological assessment Mr Yonchev had retired from service.

Relying in particular on Article 8 (right to respect for private and family life), Mr Yonchev complained that the refusal to let him have access to his personal data had not been properly justified. He notably alleged that, during the domestic proceedings, the Ministry of the Interior had never shown that the two psychological assessments had been classified.

Violation of Article 8

Just satisfaction: EUR 1,500 (non-pecuniary damage) and EUR 2,430 (costs and expenses)

Stergiopoulos v. Greece (no. 29049/12)*

The applicant, Panagiotis Stergiopoulos, is a Greek national who was born in 1969 and lives in Piraeus (Greece). The case concerned the examination of his appeal against the order made for his detention.

On 23 November 2011 Mr Stergiopoulos was arrested and held in Korydallos Prison. On 28 November 2011 the investigating judge ordered his detention after questioning him. On 2 December 2011 Mr Stergiopoulos appealed against the order for his pre-trial detention before the Indictment Division of the Athens Criminal Court. He requested that his appeal be examined “speedily”.

On 19 December 2011 the public prosecutor at the Athens Criminal Court proposed that the applicant’s request be rejected. On 5 January 2012 the Indictment Division rejected the request and ruled that the applicant should continue to be held in pre-trial detention. It observed in particular that there was strong evidence that the applicant was guilty, that he had previously been convicted of fraud and theft and that the health problems he referred to could be treated in detention. On 3 February 2012 Mr Stergiopoulos lodged an application for the detention order to be lifted subject to certain conditions. On 3 April 2012 the Indictment Division of the Court of Appeal allowed the application and the applicant was subsequently released.

Relying on Article 5 § 4 (right to speedy review of the lawfulness of detention), Mr Stergiopoulos alleged in particular that the Indictment Division had not examined his appeal against the detention order “speedily” and that had been unable to appear before the Indictment Division.

Violation of Article 5 § 4 – concerning the obligation to rule “speedily”

Violation of Article 5 § 4 – concerning the obligation to have Mr Stergiopoulos appear before the Indictment Division

Just satisfaction: EUR 3,000 (non-pecuniary damage) and EUR 1,000 (costs and expenses)

Arnoldi v. Italy (no. 35637/04)*

The applicant, Virginia Arnoldi, is an Italian national who was born in 1946 and lives in Bergamo (Italy). The case concerned the length of criminal proceedings that had been discontinued on the grounds that the offence had been statute-barred.

In February 1990 Ms Arnoldi applied to the police and the municipality requesting the demolition of a chimney which one of her neighbours had allegedly built on a building belonging to the applicant. In September 1994 the municipality informed her that, according to a statement made under oath on 23 September 1994 by the owner of the neighbouring apartment and four further witnesses, the chimney had been there for a very long time. On 9 October 1995 Ms Arnoldi lodged a criminal complaint against her neighbour and the other four witnesses for forgery. On 22 January 2003 the

judge ordered that the proceedings be discontinued on the grounds that the offence was statute-barred.

On 22 July 2003 Ms Arnoldi applied to the Venice Court of Appeal under the Pinto Act, complaining of the excessive length of the criminal proceedings. The Court of Appeal declared her appeal inadmissible. It specified that, for the injured party, the period to be taken into account in calculating the duration of the proceedings started on the date of the formal application to join the proceedings as a civil party. As the applicant had not yet formally joined the proceedings as a civil party, she could not be regarded as a true party to the proceedings, and could not therefore complain of their excessive length. The Court of Appeal acknowledged that the reason why Ms Arnoldi had been unable to join the proceedings as a civil party was because of unreasonable delays in the preliminary investigation, but stressed that it had been the applicant's choice to have recourse only to criminal proceedings. In order to protect her rights, Ms Arnoldi could have brought separate civil proceedings without necessarily awaiting the end of the preliminary investigation in the criminal proceedings; however, she had not done so.

Relying in particular on Article 6 § 1 (right to a fair trial within a reasonable time and right of access to a court), Ms Arnoldi complained of the excessive length of the criminal proceedings she had brought for forgery, and the fact that the Court of Appeal had not awarded any compensation under the Pinto Act.

Violation of Article 6 § 1 (length of proceedings)

Just satisfaction: EUR 4,500 (non-pecuniary damage) and EUR 1,500 (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.