

Press release issued by the Registrar

**Chamber judgments concerning
the Czech Republic, France, Italy, Turkey and Ukraine**

The European Court of Human Rights has today notified in writing the following ten Chamber judgments, of which only the friendly-settlement judgments are final.¹

Blücher v. the Czech Republic (application no. 58580/00) ***No violation of Article 6 § 1***

The applicant, Nicolaus Blücher, is a Czech national who was born in 1932. He is domiciled in Prague and currently lives in Switzerland.

In 1948 the applicant's cousin, Alexander Blücher, the Count of Wahlstatt, inherited many properties on the territory of what is now the Czech Republic. All the property was subsequently nationalised by the State without any compensation. Alexander Blücher died in 1974 after making a will appointing the applicant as his heir.

In 1992 the applicant sought the return of certain properties in Hrabová, Výškovice, Horní Polanka and Dolní Polanka in accordance with the Land Ownership Act (no. 229/1991). The land registry refused his request on the ground that it was not possible to consider eligible for the return of property persons who, although they satisfied the nationality and permanent resident conditions, based their claim on the title of an original owner who did not himself satisfy those conditions. The applicant unsuccessfully applied to the Ostrava Regional Court (*krajský soud*).

On 30 May 1997 the Constitutional Court (*Ústavní soud*) dismissed an appeal by Mr Blücher for a reason relating to nationality. It held that he was not entitled to the return of the property because the original owner, Alexander Blücher, had been a British national and not Czechoslovakian as required by law. Basing its decision on that judgment, the land registries of Nový Jičín and Opava rejected all the applicant's claims for restitution. Those decisions were upheld by the Prague Municipal Court (*městský soud*) on 23 June 1999 but on different grounds from those advanced by the Constitutional Court, namely, the applicant's lack of status as heir within the meaning of the Land Ownership Act.

The Constitutional Court dismissed further appeals by the applicant, again on the ground that the original owner of property had to have Czechoslovakian nationality (which the applicant had been unable to prove). Subsequently, the Prague Municipal Court upheld the decision of

¹ 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.

the Opava Land Registry according to which Mr Blücher could not establish title to the property in respect of which he was seeking restitution.

The applicant complained of unfairness in the proceedings, in that the domestic courts' interpretation of the relevant statutory provisions had been arbitrary, he had not been afforded an adequate opportunity to present his case and the standard of proof imposed on him had been unreasonable. He relied on Article 6 § 1 of the European Convention on Human Rights (right to a fair hearing).

The Court held that the Czech courts had assessed the credibility of the evidence submitted by the applicant within their exclusive jurisdiction and in the light of all the circumstances of the case and had duly given reasons for their decisions. Those decisions had been made at the end of adversarial proceedings during which the applicant, who had been represented by a lawyer, had been able to submit observations and evidence that he had considered necessary and arguments in support of his contentions.

With regard to the burden of proof imposed on the applicant of proving that his cousin had had Czechoslovakian nationality, the Court was not satisfied that it had been absolutely impossible to furnish that proof given, among other things, the historical context of the post-war period and the interest German-speaking people could have in asserting their loyalty to the Czechoslovakian State. Nor had the applicant claimed that he had been denied access to the relevant registers.

The Court held that it was for the Czech courts, particularly the Supreme Court of the country, to interpret the legislation enacted at the time of reconstruction of the country, such as that determining the conditions for returning property, and which aimed to redress certain wrongs committed in the past.

Having regard to the circumstances of the case, the Court held that the proceedings in question had been fair for the purposes of Article 6 § 1. Accordingly the Court held, unanimously, that there had not been a violation of the Convention. (The judgment is available only in French).

Netolický and Netolická v. the Czech Republic (no. 55727/00) ***Friendly settlement***

The applicants, Jaromír Netolický and Františka Netolická, are Czech nationals. In 1966 they entered into an agreement with third parties relating to the sale and donation of property. The part of the agreement relating to the donation of land was set aside in 1996 following which the applicants had to return the property.

The applicants alleged, under Article 1 of Protocol No. 1 to the Convention (protection of property), that they had been deprived of their possessions on the basis of a questionable interpretation of the law and that the decision had not been in the public interest.

The case has been struck out of the list following a friendly settlement by which the applicants will receive 240,000 Czech crowns (approximately 7,900 euros). (The judgment is available only in French).

Py v. France (no. 66289/01) ***No violation Article 3 of Protocol No. 1***

The applicant, Bruno Py, is a French national who was born in 1964 and lives in Nancy (France).

He is a teacher and researcher. In 1995 he was appointed to a post at the French University of the Pacific in Nouméa in New Caledonia. At his request he was registered in the general electoral roll in respect of Nouméa, but was refused registration on the special electoral roll which would have enabled him to take part in the 1998 self-determination vote.

Subsequently the Ordinance of 19 March 1999 on the institutional organisation of New Caledonia brought in a 10-year residence condition for participating in elections to the Congress and provincial assemblies. In accordance with that law the applicant's registration on the special electoral roll in respect of Nouméa, which would have enabled him to participate in the elections to Congress, was refused. The applicant sought judicial review of that law. An appeal he lodged on points of law was dismissed on the ground that the 1999 ordinance instituting the residence condition could not be reviewed because it had constitutional value.

The applicant alleged that the restrictions imposed on his right to take part in the elections to the Congress and provincial assemblies of New Caledonia had violated the right to free elections guaranteed by Article 3 of Protocol No. 1 and constituted discrimination on grounds of national origin, in breach of Article 14 (prohibition of discrimination).

Given the powers attributed to Congress by the 1999 ordinance, the Court considered that it was sufficiently associated with the legislative process to be regarded as part of the "legislature" of New Caledonia within the meaning of Article 3 of Protocol No. 1.

According to the French Government, the reason for bringing in a residence condition was to ensure that the consultations would reflect the will of "interested" persons and that the result would not be altered by a massive vote cast by recent arrivals on the territory who had no solid links with it. Furthermore, the restriction on the right to vote was a direct and necessary consequence of establishing Caledonian citizenship.

It was possible that Mr Py had established links with New Caledonia, but the law could not take account of every individual case. Mr Py, who had since returned to metropolitan France, could not argue that he was targeted by the acts of political bodies to the same extent as resident citizens. His position was different from that of a resident citizen, which justified the residence condition.

The 10-year residence requirement could appear disproportionate at first sight. Although Mr Py had not sought to settle in New Caledonia he had been subject to the laws voted by Congress and, in particular, to the criminal laws which could provide for prison sentences, and the 10-year residence requirement corresponded to two terms of office of Congress members.

However, the Court found that New Caledonia's current status amounted to a transitional phase prior to the acquisition of full sovereignty and was part of a process of self-determination. After a tormented political and institutional history the 10-year residence condition had been a key factor in appeasing the deadly conflict.

In the Court's opinion, the history and status of New Caledonia were such that they could be regarded as amounting to "local requirements" of a kind warranting the restrictions imposed on the applicant's right to vote. Consequently, the Court held unanimously that there had not

been a violation of Article 3 of Protocol No. 1 and considered, having regard to that conclusion, that it was not necessary to examine the complaint based on Article 14. (The judgment is available only in French).

Violations Article 6 § 1

Musumeci v. Italy (no. 33695/96)

Violation Article 8

The applicant, Carmelo Musumeci, is an Italian national who was born in 1955. He is currently being held in Nuoro Prison (Sardinia).

He was arrested and taken into custody on suspicion of leading a Mafia-type organisation that was active in Northern Tuscany and involved in drug trafficking, extortion and games of chance. From July 1992 he was subjected to the special prison regime established by section 41 *bis* of the Prison Administration Act of 1975 which imposed a number of restrictions on him that were not applied to other inmates. That measure, which had initially been prescribed for one year, was extended nine times by decisions against which the applicant appealed.

After being convicted of murder the applicant was placed under close surveillance (*Elevato Indice di Vigilanza* – High-Level Surveillance). The Turin court responsible for the execution of sentences dismissed his request to serve his sentence under the normal prison regime on the ground that submission to the E.I.V. regime was subject to the discretion of the authorities.

The applicant complained that he had been subjected to the special prison regime of the 1975 law and the E.I.V. regime without having any effective remedy available to him to challenge that decision, in breach of Article 6 § 1 (right of access to a court) of the Convention. He further complained under Article 8 (right to respect for correspondence) of the Convention that his correspondence had been censored.

With regard to the application of the regime prescribed by the 1975 law, the Court noted that the applicant had appealed against the nine orders imposing the special regime on him but that none of the decisions on his appeals had been made within the statutory 10-day time period in which the court responsible for the execution of sentences had to rule on such an appeal. The systematic failure to comply with that time-limit had considerably reduced, or even annulled, the effect of the courts' review of those orders. Accordingly, the Court found that the appeal to the court responsible for the execution of sentences did not amount to an effective remedy and that the court's delay in ruling on the applicant's appeals had infringed his right to have his case heard by a court. It held unanimously that there had been a violation of Article 6 § 1.

With regard to the application of the E.I.V. regime the Court noted that the relevant court had found that its application was a matter for the discretion of the authorities. Moreover the Constitutional Court had held that certain provisions of the Prison Administration Act were unconstitutional because they did not provide for any appeal against decisions of the authorities restricting inmates' rights. Consequently, the Court found that the applicant had been unable to challenge the decision subjecting him to the E.I.V. regime and held, unanimously, that there had been a violation of Article 6 § 1.

The Court also reiterated that section 18 of the Prison Administration Act, which was in force at the time and allowed inmates' correspondence to be monitored, could not be regarded as being in accordance with the law because it did not regulate either the length of the measures

or the grounds justifying them and did not clearly indicate the scope or conditions of exercise of the relevant authorities' discretion in this area. Accordingly, the Court held unanimously that there had been a violation of Article 8.

As Mr Musumeci had not submitted a claim for just satisfaction, the Court found it unnecessary to apply Article 41. (The judgment is available only in French).

Sciacca v. Italy (no. 50774/99)

Violation Article 8

The applicant, Carmela Sciacca, is an Italian national who was born in 1948 and lives in Syracuse (Italy). She was a teacher at a private school in Lentini which owned a company of which she and other teachers were members.

During an investigation into irregularities of management of the school's activities, Mrs Sciacca was prosecuted for criminal conspiracy, tax evasion and forgery. She was arrested and was made subject to a compulsory residence order in November 1998. The tax inspectors drew up a file on her containing photographs and her fingerprints.

Following a press conference on 4 December 1998 given by the public prosecutor's office and the tax inspectors, the dailies *le Giornale di Sicilia* and *la Sicilia* published articles on the facts giving rise to the prosecution which were illustrated by a photograph of the four arrested women, including the applicant. The photograph of Mrs Sciacca, which was published four times, was the one that had been taken by the tax inspectors when the file was drawn up on her and released by them to the press.

At the end of the proceedings the applicant was sentenced to one year and ten months' imprisonment and fined EUR 300.

The applicant submitted that the dissemination of her photograph at the press conference had infringed her right to respect for her private life, contrary to Article 8 (right to respect for private life) of the Convention.

The Court noted that the photograph, taken for the purposes of drawing up an official file, had been released to the press by the tax inspectors. According to the information in its possession, there was no law governing the taking of photographs of people under suspicion or arrested and assigned to residence and the release of photos to the press. It was rather an area in which a practice had developed.

As the interference with the applicant's right to respect for her private life had not been "in accordance with the law" within the meaning of Article 8, the Court concluded that there had been a breach of that provision. It considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged by the applicant and awarded her EUR 3,500 for costs and expenses. (The judgment is available only in French).

Violation Article 10

Halis v. Turkey (no. 30007/96)

Violation Article 6 § 1

The applicant, Atilla Halis, is a Turkish national, born in 1969 and living in Istanbul.

Mr Halis reviewed four books about problems relating to Turkey's south-eastern region in the 2 January 1994 edition of the newspaper *Özgür Gündem*. One of the books, "*Tasfiyeciliğin Tasfiyesi*", was written by the leader of the PKK, Abdullah Öcalan.

On 20 March 1995 Istanbul State Security Court found the applicant guilty of disseminating propaganda about an illegal separatist organisation and sentenced him to one year's imprisonment and to a fine of four hundred million Turkish liras. The execution of his sentence was suspended on 25 July 2002.

The applicant complained that his criminal conviction infringed his right to freedom of expression and that the state security court that tried him was not an independent and impartial tribunal capable of guaranteeing him a fair trial, because one of its members was a military judge. He relied on Article 10 (freedom of expression) and Article 6 § 1 (right to a fair trial).

The Court attached particular significance to the fact that the applicant was convicted and sentenced to imprisonment for disseminating propaganda about the PKK even though the impugned article was never actually disseminated, since the 2 January 1994 edition of *Özgür Gündem* was seized before it was distributed.

The Court further observed that, notwithstanding the fact that the execution of the sentence imposed on the applicant was suspended, he nevertheless faced the threat of a heavy penalty.

Finding that the applicant's conviction was disproportionate to the aims pursued and, accordingly, not "necessary in a democratic society", the Court held, unanimously, that there had been a violation of Article 10.

The Court also concluded, unanimously, that there had been a violation of Article 6 § 1 as the State Security Court which tried and convicted the applicant was not an independent and impartial tribunal.

The Court awarded the applicant EUR 2,000 in respect of non-pecuniary damage and EUR 1,375 for costs and expenses. (The judgment is available only in English.)

Molin İnşaat v. Turkey (no. 38424/97)

Violation Article 6 § 1

The applicant, Molin İnşaat, is a Turkish construction company whose head office is in Istanbul.

It complained under Article 6 § 1 (right to a fair trial within a reasonable time) of the length of proceedings in which it had been involved against the Communal Housing Department. It further argued that there had been a breach of its right to the peaceful enjoyment of its possessions as a result of the length of those proceedings, in violation of Article 1 of Protocol No. 1 (protection of property).

The Court noted that the period concerned had lasted eight years and four months for four levels of jurisdiction. Having regard to the circumstances of the case, it considered that that length of time did not satisfy the reasonable-time requirement of Article 6 § 1 and therefore concluded, unanimously, that there had been a violation of the Convention on that point. On account of that conclusion the Court did not consider it necessary to examine the complaint based on Article 1 of Protocol No. 1.

Under Article 41 (just satisfaction) the Court awarded the applicant company EUR 5,800 for non-pecuniary damage and for costs and expenses. (The judgment is available only in French.)

Tekin and Taştan v. Turkey (no. 69515/01)

Violation Article 6 § 1

The applicants, Eren Tekin and Nimet Taştan, are Turkish nationals who were born in 1966 and 1971 respectively.

Mr Tekin was sentenced by a national security court to life imprisonment for carrying on activities with a view to removing part of the territory from the administration of the State. Mrs Taştan was sentenced to 12 years and six months' imprisonment for being a member of an illegal organisation.

The applicants complained under Article 6 § 1 (right to a fair hearing) that their trial had been unfair, particularly because a military judge had sat on the National Security Court.

The Court concluded unanimously that there had been a violation of Article 6 § 1 regarding the complaint that the National Security Court had not been independent or impartial. Reiterating that a court whose lack of independence and impartiality had been established could not in any circumstances guarantee a fair trial to the persons subject to its jurisdiction, the Court considered that it was unnecessary to examine the other complaint regarding the unfairness of the proceedings.

The Court held unanimously that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged by the applicants. It reiterated that where it found that an applicant had been convicted by a tribunal that was not independent or impartial within the meaning of Article 6 § 1 the most appropriate form of redress would in principle be for them to be retried by an independent and impartial court at an early date. The Court awarded the applicants jointly EUR 1,000 for costs and expenses. (The judgment is available only in French).

Zana and Others v. Turkey (nos. 51002/99 and 51489/99)

Friendly settlement

The applicants, Leyla Zana, Veysel Turhan and Hamit Geylani, are Turkish nationals who were born in 1961, 1968 and 1947 respectively. Mrs Zana is a former member of the DEP (Democracy Party) that was dissolved by the Constitutional Court. Mr Turhan is the former president of the *HADEP* (People's Democracy Party) in the province of Siirt and Mr Geylani was the Secretary General of that party.

They were sentenced to one year and four months' imprisonment and the payment of a fine for publishing separatist propaganda after an article and a statement published by Mr Turhan and Mr Geylani had appeared in the January 1997 edition of the *HADEP* monthly journal. Mrs Zana was also sentenced to two years' imprisonment and a fine for inciting hatred and hostility on the basis of a distinction made on the grounds of social class, race and religion.

The applicants alleged under Article 10 (freedom of expression) that their convictions by a national security court which failed to meet the independence and impartiality requirements set out in Article 6 § 1 (right to a fair hearing) had constituted a violation of their freedom of expression.

The case was struck out of the list following a friendly settlement under which Mrs Zana will receive EUR 9,000 for damage and for costs and expenses. Mr Turhan and Mr Geylani will each receive EUR 7,000 for damage and EUR 1,500 jointly for costs and expenses. (The judgment is available only in French).

Violation Article 6 § 1

Dubenko v. Ukraine (no. 74221/01)

Violation Article 1 of Protocol No. 1

The applicant, Igor Samoylovich Dubenko, is a Ukrainian national, who was born in 1949 and currently lives in Artemivsk, in the Donetsk Region.

The applicant complained of the failure of the State authorities to execute a judgment in his favour awarding him compensation for salary arrears and of the substantial delay (three years and two-and-a-half months) in the payment of the amount awarded. He relied on Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 1 of Protocol No. 1 (protection of property).

The Court considered that the alleged lack of funds of a State-owned enterprise could not justify the substantial delay in paying the applicant and held unanimously that there had been a violation of Article 6 § 1 and Article 1 of Protocol No. 1. The applicant was awarded EUR 1,520 in respect of non-pecuniary damage and EUR 300 for costs and expenses. (The judgment is available only in English.)

These summaries by the Registry do not bind the Court. The full texts of the Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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