



## Judgments of 19 July 2016

The European Court of Human Rights has today notified in writing 15 judgments<sup>1</sup>:

Six Chamber judgments are listed below;

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

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

### Flores Quiros v. Spain (application no. 75183/10)\*

The applicant, Juana Flores Quiros, is a Spanish national. The case concerned the non-enforcement of a judgment cancelling the auctioning of commercial premises which she jointly owned with her former husband.

In order to recover debts from M.B.M., Ms Flores Quiros's former husband, the Social Security Department (TGSS) instigated judicial enforcement proceedings and, in September 2003, auctioned the couple's commercial premises. After the auction the premises were purchased by a third person, but Ms Flores Quiros and her former husband brought separate administrative proceedings to contest the lawfulness of the auction. Ms Flores Quiros, for her part, instigated proceedings before the Madrid Administrative Disputes Court No. 25, which set aside the sale in a judgment of 8 May 2006, pinpointing a procedural flaw, that is to say a failure to notify the selling price set for the premises. That judgment was upheld on appeal on 15 December 2006, and became final. On 23 March 2007 the Madrid Administrative Disputes Court No. 25 ordered the enforcement of the judgment within ten days. Ms Flores Quiros's former husband also appealed to the Madrid Administrative Disputes Court No. 1, but his appeal was dismissed by a judgment of 31 July 2006 on the grounds that the auction had been lawful *vis-à-vis* M.B.M and that it was incumbent on Ms Flores Quiros to lodge the relevant appeals against the procedural flaw which had been prejudicial to her interests.

On 4 June 2007 Ms Flores Quiros requested the enforcement of the 8 May 2006 judgment, but the TGSS objected on the basis of the 31 July 2006 judgment delivered by the Madrid Administrative Disputes Court No. 1 declaring the auction lawful. By a decision of 9 October 2007 the Madrid Administrative Disputes Court No. 25 dismissed as inappropriate Ms Flores Quiros's request for enforcement of the judgment, pointing out that the TGSS would be able to continue the enforcement proceedings. Ms Flores Quiros appealed and also lodged an *amparo* appeal, unsuccessfully.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, Ms Flores Quiros complained of the non-enforcement of the judgment of 8 May 2006, which had become final, cancelling the auctioning of the commercial premises at issue.

### Violation of Article 6 § 1

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

**Just satisfaction:** Ms Flores Quiros did not submit a claim for just satisfaction within the time-limit set by the Court.

### Dorota Kania v. Poland (no. 49132/11)\*

The applicant, Dorota Kania, is a Polish national who was born in 1963 and lives in Warsaw.

The case concerned Ms Kania's conviction on charges of defamation after publishing an article in a national weekly.

In June 2007 Ms Kania, together with another co-author, published an article entitled "The Godmother" in the national weekly *Wprost* positing that the communist secret police had created the Polish mafia and protected it throughout the 1980s. The article also claimed that State officials, who became members of the police services under the democratic regime post-1989, had continued to protect their former colleagues still involved in the thriving world of organised crime.

R.B., a former colonel with the Internal Security Agency targeted by the article in question, lodged an official complaint, and in August 2010 Ms Kania was fined 3,500 euros (EUR) and ordered to pay various charities an amount equivalent to three months' wages, as the Warsaw District Court considered that two of the applicant's claims had been untruthful. That decision was upheld on appeal on 1 February 2011, but the amounts of the fine and the sum to be paid to charities were reduced in the light, in particular, of the applicant's family situation and income. The sums were subsequently paid by a foundation, the *Fundacja Niezależne Media*.

Relying on Article 10 (freedom of expression), Ms Kania alleged that her sentence had violated her right to freedom of expression.

#### **No violation of Article 10**

### G.N. v. Poland (no. 2171/14)

The applicant, Mr G.N., is a dual Polish and Canadian national who was born in 1961 and lives in Mississauga (Canada). The case concerned his complaint that the Polish courts had refused to order the return of his child to Canada.

In 2009 G.N. married a Polish national, E.N., in Canada, where the couple continued living and where their son was born in September 2010. While they were in Poland on holiday in May 2011 they split up, and E.N. refused to return to Canada with the child. G.N. went back to Canada alone. In October 2011 he lodged an application with the Polish courts to have his child returned under the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention"). In January 2013 the competent district court dismissed the application. While the court held that the child had been wrongfully retained in Poland by the mother, within the meaning of the Hague Convention, it concluded – relying in particular on an expert report which found that the child had a strong emotional bond with his mother, did not remember his father and did not perceive him as a parent – that returning the child to Canada would pose a threat to his emotional and social development. The court also considered that interim orders issued in the meantime by the Canadian courts, granting G.N. full custody of the child, were irrelevant to the application at hand. The decision was upheld on appeal in July 2013.

In parallel, in 2012, G.N. lodged an application with the Polish court for arrangements to secure his right of contact with the child. The competent district court returned the application as unsubstantiated, finding that G.N. had not demonstrated that the child's mother had obstructed his contact with the child.

Divorce proceedings brought by E.N. are pending before the Polish courts.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, G.N. complained in particular of the dismissal of his Hague Convention request. In particular, he alleged that the Polish courts had misapplied the Hague Convention and allowed the child to become alienated from him by failing to decide the case speedily.

#### Violation of Article 8

**Just satisfaction:** 9,000 euros (EUR) (non-pecuniary damage) and EUR 14,446 (costs and expenses)

#### Călin and Others v. Romania (nos. 25057/11, 34739/11 and 20316/12)\*

The applicants, Dumitru Leonard Călin, Antonia Miruna Moldovan and Andrei Marian Mihalcea, are Romanian nationals who were born in 1967, 2003 and 1989 and live in Iași, Ulies and Curtea de Argeș (Romania), respectively.

The case concerned the inability of the three applicants, who were born out of wedlock, to bring paternity actions on the grounds that the relevant limitation periods had expired.

When Mr Călin, Mr Mihalcea and Ms Moldovan were born, the Family Code laid down that paternity actions in respect of children born out of wedlock had to be brought within one year from the child's date of birth or, where the child's mother had been living with the presumed father, from the date on which the couple had ceased to live together. Such an action could be brought on the child's behalf by the mother or the child's legal representative. In the three applicants' case, their mothers had failed to bring valid actions within the legal time limit. Their actions were therefore dismissed by the domestic courts.

On 8 November 2007 Law No. 288/2007, amending the Family Code, came into force. This Code provided that the child's right to bring a paternity action was not subject to statutory limitation; section II of that Law also laid down that its provisions applied to children born out of wedlock before its entry into force. On different dates Mr Călin, Mr Mihalcea and Ms Moldovan relied on the provisions of the said new Law before the trial courts, which dismissed their actions on the basis of the 9 December 2008 decision of the Constitutional Court declaring section II of the new Law unconstitutional on the ground that the principle of non-retroactivity of civil law ruled out the applicability of the provisions of Law No. 288/2007 to individuals born before its entry into force.

Relying, in particular, on Article 8 (right to respect for private and family life), the three applicants complained that their inability to establish their affiliation because of the statutory limitation argument advanced by the domestic authorities had infringed their right to respect for their private life.

**Violation of Article 8** – in respect of Mr Călin and Ms Moldovan  
Application of Mr Mihalcea declared **inadmissible**

**Just satisfaction:** EUR 4,500 each to Mr Călin and Ms Moldovan in respect of non-pecuniary damage), and EUR 300 to Mr Călin and EUR 4,104 to Ms. Moldovan in respect of costs and expenses

#### E.S. v. Romania and Bulgaria (no. 60281/11)

The applicant, E.S., is a Romanian national who was born in 1981 and lives in Hotarele, Vâlcea County (Romania). The case concerned her complaint about the authorities' unsatisfactory response to her daughter's kidnapping in Romania and her being illegally kept by her paternal grandparents in Bulgaria.

Ms E.S. lived with her partner, a Bulgarian national, R.E.N., in Spain, where she gave birth to their daughter in November 2004. In 2008 the couple split up. From January 2007 until March 2008 the child lived with her paternal grandparents in Bulgaria. After the child had again lived in Spain with

her parents for three months, E.S. took her to Romania with R.E.N.'s consent for what was meant to be a short stay with the child's maternal grandmother. E.S. then remained with her daughter in Romania until September 2008 and subsequently returned to Spain to work, leaving the child with her maternal grandmother. In November 2008 the child's paternal grandparents visited the child in Romania. On that occasion, after taking the child to town with the maternal grandmother's consent, the paternal grandparents never returned the child but instead took her to Bulgaria without the knowledge and consent of E.S. or her family. The child has been living in Bulgaria with her paternal grandparents ever since.

In July 2008 E.S. lodged a request for full custody of the child with the Romanian courts. In January 2009 she was awarded custody. However, the judgment was subsequently quashed on the ground that R.E.N. had not been legally summoned to appear. In November 2010 E.S. was again awarded custody. However, on appeal by R.E.N. – who had in the meantime relocated to Bulgaria where he lived with his parents and the child – and after having heard the child, the county court granted custody to R.E.N. in October 2011 on the grounds that the child was already integrated into her environment in Bulgaria. That decision was in turn quashed by the appeal court and eventually the decision to grant custody to E.S. was upheld in January 2012. E.S.'s application for temporary custody of her daughter pending the outcome of the custody proceedings was rejected by the Romanian courts in 2011.

Following recognition, in 2009, by the Bulgarian courts of the Romanian courts' first-instance decision granting E.S. custody, a first attempt to enforce that decision was unsuccessful. The enforcement proceedings in Bulgaria were then suspended in 2011 on request by R.E.N. Eventually the Bulgarian courts again recognised the decision granting custody to E.S. by a final decision of May 2014. E.S. subsequently brought new enforcement proceedings, which were then also suspended, in July 2014, having regard to the fact that R.E.N. had in the meantime brought proceedings in Bulgaria for a change of custody in his favour, and in view of the fact that a sudden change in the child's environment would not be in her interest.

In 2011, on advice by the Romanian Ministry of Justice, E.S. also brought proceedings under the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention") for the return of her daughter. However, the request was refused by the Bulgarian authorities, as the Hague Convention had not entered into force between Romania and Bulgaria.

Relying on Article 8 (right to respect for family life), E.S. complained about: the rupture of her family ties with her daughter caused by the lack of a prompt reaction from the Romanian and Bulgarian authorities in respect of the return of the child; the length of the custody proceedings in Romania; and the enforcement of her custody rights over the child.

**Violation of Article 8** by Romania – concerning the custody proceedings

**No violation of Article 8** by Romania – concerning the proceedings under the Hague Convention

**Violation of Article 8** by Bulgaria

**Just satisfaction:** E.S. did not submit a claim for just satisfaction.

### Mircea Pop v. Romania (no. 43885/13)

The applicant, Mircea Pop, is a Romanian national who was born in 1960 and lives in Constanța (Romania).

The case concerned the death of Mr Pop's son in a work accident, and the subsequent investigation into the circumstances surrounding the fatal accident.

In September 2005 Mr Pop's son, who was 18 years old at the time, was found dead in an enclosed compartment in the hold of a ship which was under construction. He had been sent, alone, to work on the vessel by the company U., his employer. He was holding an electric lamp connected to the

mains in his right hand. The forensic medical officer concluded that Mr Pop's son had died a violent death by electrocution.

Mr Pop lodged a criminal complaint against the foreman in charge and the company managers, submitting that they had been responsible for his son's death and had infringed the health and safety legislation by sending him to perform work for which he was not qualified and for which he had not been provided with the requisite protective equipment. The expert opinion commissioned by the prosecution confirmed that the death had been caused by the person's contact with the lamp, which had been defective and had not been properly connected to the mains, concluding that the victim had made the mistake of using a lamp plugged into the mains instead of a portable lamp. In November 2005 the labour inspectorate imposed a fine on the company U. on the grounds that the accident had been caused by inappropriate use of the electric lamp, that the victim had not received work safety training and that he had not been provided with the appropriate security equipment.

Mr Pop's criminal complaints were dismissed several times, and each time he contested the decision. At the end of the proceedings on 27 December 2012 the Călărași first-instance court delivered a final judgment dismissing Mr Pop's complaint, concluding that his son's death had been caused by the victim's own negligence because, as a trained welder, he should have known about the ban on using the lamp in question in confined spaces and the obligation to work with security equipment, even though had been provided neither with specific training for the tasks assigned to him nor with any protective equipment. The court also confirmed the statutory limitation of criminal responsibility for breaches of work safety legislation and the discontinuance decision regarding the offence of manslaughter.

Relying on Article 2 (right to life), Mr Pop complained about the investigation conducted into the circumstances of the accident which had led to the death of his son, and also about the length of the investigation.

#### **Violation of Article 2** (investigation)

**Just satisfaction:** EUR 12,000 (non-pecuniary damage) and EUR 2,252 (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.