

EMD-bulletin

– nytt fra menneskerettighetsdomstolen i Strasbourg

Nr. 2 År 2014 Dato 14. februar Utgiver Norsk senter for menneskerettigheter

Kategori 1-avgjørelser fra EMD: Januar



Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

PITSAYEVA and OTHERS v. RUSSIA

Date: 09/01/2014 **Application nos.:** 53036/08; 61785/08; 8594/09; 24708/09; 30327/09; 36965/09; 61258/09; 63608/09; 67322/09; 4334/10; 4345/10; 11873/10; 25515/10; 30592/10; 32797/10; 33944/10; 36141/10; 52446/10; 62244/10; 66420/10

Articles: 2; 2-1; 3; 5; 5-1; 13; 13+2; 13+3; 35; 35-1; 41

Conclusion: Preliminary objection dismissed (Article 35-1 - Exhaustion of domestic remedies); Preliminary objection dismissed (Article 35-1 - Six month period); Violation of Article 2 - Right to life (Article 2-1 - Life) (Substantive aspect); Violation of Article 2 - Right to life (Article 2-1 - Effective investigation) (Procedural aspect); Violation of Article 3 - Prohibition of torture (Article 3 - Degrading treatment) (Substantive aspect); Violation of Article 5 - Right to liberty and security (Article 5-1 - Lawful arrest or detention); Violation of Article 13+2 - Right to an effective remedy (Article 13 - Effective remedy) (Article 2 - Right to life); Violation of Article 13+3 - Right to an effective remedy (Article 13 - Effective remedy) (Article 3 - Prohibition of torture); Pecuniary and non-pecuniary damage - award

The case concerned the disappearances of 36 men after they were abducted in Chechnya by groups of armed men, in a manner resembling a security operation, between 2000 and 2006. The Court has regularly found violations of the same rights in similar cases in more than 120 judgments, resulting from the disappearances that have occurred in the Northern Caucasus since 1999. It confirmed its



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conclusion in previous cases that the situation resulted from a systemic problem of non-investigation of such crimes, for which there was no effective remedy at national level.

Norsk sammendrag på Lovdata.no

JONES AND OTHERS v. THE UNITED KINGDOM

Date: 14/01/2014 **Application nos.:**34356/06; 40528/06

Articles: 6; 6-1

Conclusion: No violation of Article 6 - Right to a fair trial (Article 6 - Criminal proceedings; Article 6-1 - Access to court); No violation of Article 6 - Right to a fair trial (Article 6 - Criminal proceedings; Article 6-1 - Access to court)

The case concerned four British nationals who alleged that they had been tortured in Saudi Arabia by Saudi State officials. The applicants complained about the UK courts' subsequent dismissal for reasons of State immunity of their claims for compensation against Saudi Arabia and its officials. The Court found that the granting of immunity to Saudi Arabia and its State officials in the applicants' civil cases had reflected generally recognised current rules of public international law and had not therefore amounted to an unjustified restriction on the applicants' access to court. In particular, while there was some emerging support at the international level in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials, the weight of authority suggested that the State's right to immunity could not be circumvented by suing named officials instead. The House of Lords had considered the applicants' arguments in detail and dismissed them by reference to the relevant international law principles and case-law. However, in light of the current developments in this area of public international law, this was a matter which needed to be kept under review by Contracting States.

Norsk sammendrag på Lovdata.no

BITTÓ AND OTHERS v. SLOVAKIA

Date: 28/01/2014 **Application no.:** 30255/09

Articles: 35; 41; 46; 46-2; P1-1; P1-1-2

Conclusion: Remainder inadmissible; Violation of Article 1 of Protocol No. 1 - Protection of property (Article 1 para. 2 of Protocol No. 1 - Control of the use of property); Respondent State to take measures of a general character (Article 46-2 - Measures of a general character); Just satisfaction reserved

The case concerned 21 Slovakian nationals who were born between 1923 and 1977. 20 of them live in Slovakia and one lives in the Czech Republic. The case concerned the applicants' complaints that rent controls on properties owned by them restricted their right to peacefully enjoy their possessions. The applicants are owners or co-owners of residential buildings in Bratislava and Trnava to which the rent-control scheme applied, or has applied. They obtained the ownership of the flats by various means, such as restitution, donation or inheritance from their relatives to whom the flats had been restored. The majority of the applicants acquired ownership in the course of the 1990s. The flats in

these houses were mostly occupied by tenants, who paid the new owners a rate of rent regulated by the government and whose eviction was practically impossible. The applicants – who have gained ownership of the properties from relatives to whom the flats were restored, or from restitution – complained that the rent they received was a fraction of what they would obtain if the flats were made available on the open market. Furthermore, they alleged that the regulated rate of rent was not even sufficient to cover the costs of maintenance and repairs. Relying in particular on Article 1 of Protocol No. 1 (protection of property), the applicants complained that the rent controls had breached their right to peaceful enjoyment of their possessions. The Court held that there had been a violation of Article 1 of protocol No.1.

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O'KEEFFE v. IRELAND

Date: 28/01/2014 **Application no.:** 35810/09

Articles: 3; 13; 13+3; 34; 35; 35-1; 35-3; 41

Conclusion: Preliminary objection dismissed (Article 35-1 - Exhaustion of domestic remedies); Preliminary objection dismissed (Article 34 - Victim); Preliminary objection joined to merits and dismissed (Article 35-3 - Manifestly ill-founded); Violation of Article 3 - Prohibition of torture (Article 3 - Degrading treatment; Inhuman treatment) (Substantive aspect); Violation of Article 13+3 - Right to an effective remedy (Article 13 - Effective remedy) (Article 3 - Prohibition of torture; Degrading treatment; Inhuman treatment); No violation of Article 3 - Prohibition of torture (Article 3 - Effective investigation) (Procedural aspect); Pecuniary and non-pecuniary damage - award

The case concerned the question of the responsibility of the State for the sexual abuse of a schoolgirl, aged nine, by a lay teacher in an Irish National School in 1973. The Court found that it was an inherent obligation of a Government to protect children from ill-treatment, especially in a primary education context. That obligation had not been met when the Irish State, which had to have been aware of the sexual abuse of children by adults prior to the 1970s through, among other things, its prosecution of such crimes at a significant rate, nevertheless continued to entrust the management of the primary education of the vast majority of young Irish children to National Schools, without putting in place any mechanism of effective State control against the risks of such abuse occurring. On the contrary, potential complainants had been directed away from the State authorities and towards the managers (generally the local priest) of the National Schools. Indeed, any system of detection and reporting of abuse which allowed over 400 incidents of abuse to occur in Ms O'Keeffe's school for such a long time had to be considered ineffective.

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Avgjørelser mot Norge: Januar

LILLO-STENBERG and SÆTHER v. NORWAY

Date: 16/01/2014 **Application no.:** 13258/09

Articles: 8; 8-1

Conclusion: No violation of Article 8 - Right to respect for private and family life (Article 8-1 - Respect for private life)

The case concerned two Norwegian nationals, Lars Lillo-Stenberg and Andrine Sæther, who were born in 1962 and 1964 respectively and live in Oslo. The case concerns a well-known musician and actress in Norway who complain about press invasion of their privacy during their wedding on 20 August 2005. The wedding took place outdoors on an islet in the Oslo fjord accessible to the public. Without the couple's consent, the weekly magazine *Se og Hør* subsequently published a two-page article about the wedding accompanied by six photographs. They showed the bride, her father and bridesmaids arriving at the islet in a small rowing boat, the bride being brought to the groom by her father and the bride and groom returning to the mainland on foot by crossing the lake on stepping stones. The couple brought compensation proceedings against the magazine and won before the first two instances. However, on 2 September 2008 the Supreme Court found against the couple. It considered that they had married in a place which was accessible to the public and that the article was neither offensive nor negative. Relying on Article 8 (right to respect for private and family life), the applicants complained that their right to respect for private life was breached by the Supreme Court's judgment of 2 September 2008. The Court held that there had been no violation of Article 8.

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Månedens utvalgte: Lillo-Stenberg and Sæther v. Norway

Fakta:

Klagerne var en musiker og en skuespillerinne som giftet seg på Tjøme i august 2005. De var begge kjente personer i Norge. Seremonien fant sted utendørs på en holme. Bruden hadde ankommet holmen i en robåt og blitt fulgt av faren sin opp til den ventende brudgommen. På holmen ble

bruden også møtt av et syngende mannskor. Ukebladet Se og Hør utga en tosidig reportasje om bryllupet som inneholdt seks bilder. Bildene viste blant annet bruden som ankom holmen, at brudens far fulgte henne til brudgommen, og bruden og brudgommen som returnerte til fastlandet. Ukebladets journalister hadde ikke blitt invitert til bryllupet og klagerne var ikke klar over at bildene ble tatt. Bildene ble tatt med telelinse fra en avstand på omtrent 250 meter. Klagerne gikk til sak mot ukebladet med krav om oppreisning for brudd på reglene om vern av privatlivets fred. De ble tilkjent oppreisning i Oslo tingrett. Ukebladet anket saken til Borgarting lagmannsrett som opprettholdt tingrettens dom. Saken ble så anket videre til Høyesterett. Høyesteretts flertall konkluderte med frifinnelse i dom 9. februar 2008 [HR-2008-1480-A]

Anførsler:

Klagerne anførte at Høyesteretts dom krenket deres rett til respekt for privatliv etter artikkel 8.

Staten imøtegikk klagerens anførsler.

Domstolens vurderinger:

Domstolen gjorde først rede for noen av de generelle prinsippene som gjelder ved anvendelsen av retten til privatliv etter artikkel 8 og retten til ytringsfrihet etter artikkel 10. Hva gjaldt vurderingen av hvorvidt inngrep i ytringsfriheten er nødvendig for å verne andres omdømme eller rettigheter, bemerket Domstolen at det kan være nødvendig å undersøke om nasjonale myndigheter har foretatt en rimelig avveining mellom rettighetene etter konvensjonen. Videre gjentok Domstolen, med henvisning til sine tidligere avgjørelser *Von Hannover v. Germany* (no. 2) [GC], [no. 40660/08] og [no. 60641/08], og *Axel Springer AG v. Germany* [GC] [no. 39954/08], hvilke vurderingskriterier som anvendes ved avveiningen av retten til ytringsfrihet på den ene siden og retten til respekt for privatliv på den annen; om det er tale om et bidrag til en debatt av generell interesse, hvor godt kjent den involverte personen er og hva som er reportasjens tema, den involverte personens tidligere opptreden, måten informasjonen ble innhentet på og informasjonens sannferdighet/under hvilke forhold fotografiene ble tatt, samt innhold, form og konsekvenser av publikasjonen.

Ved vurderingen av den foreliggende sak, bemerket Domstolen at vurderingskriteriet vedrørende allmenn interesse er knyttet til vurderingskriteriet om hvor godt kjent personen er. Selv om klagerne ikke hadde noen offentlige samfunnsoppgaver, anså Domstolen dem for å være offentlige figurer. Domstolen var enig i Høyesteretts bemerkning om at et bryllup også har et offentlig aspekt ved seg, og fant at artikkelen om bryllupet også hadde et element av generell interesse. Domstolen bemerket at den ikke var blitt forelagt noe informasjon i forhold til vurderingskriteriet vedrørende klagerens tidligere opptreden, men den påpekte likevel at det å tidligere ha samarbeidet med pressen ikke kan anvendes som et argument for å frata vedkommende all beskyttelse mot publikasjoner av artikler og bilder. Hva gjaldt vurderingen av de resterende vurderingskriteriene, viste Domstolen til Høyesteretts drøftelser som blant annet påpekte at bildene ble tatt med telelinse på lang avstand, at reportasjen ikke hadde inneholdt noen negativ omtale av klagerne, at det ikke ble tatt bilder av selve vielsen og at seremonien var organisert på en noe uvanlig måte og ble utført på et offentlig sted som var tilgjengelig for allmennheten, hvilket gjorde det sannsynlig at den ville få oppmerksomhet fra utenforstående.



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Domstolen fant at både Høyesteretts flertall og mindretall hadde foretatt en rimelig avveining av de motstående rettighetene og at Høyesterett uttrykkelig hadde anvendt de vurderingskriteriene som på daværende tidspunkt var fastsatt gjennom Domstolens praksis. I tillegg bemerket Domstolen at Høyesterett i realiteten også hadde vurdert alle vurderingskriteriene som hadde blitt fastsatt gjennom Domstolens etterfølgende praksis. Videre fant Domstolen grunn til å påpeke at dersom den nasjonale domstolen har foretatt en avveining som omfatter alle de vurderingskriteriene som er fastsatt gjennom Domstolens praksis, må det foreligge sterke grunner som taler for at Domstolen skal erstatte sitt eget syn med de nasjonale domstolenes.

På bakgrunn av dette, og sett hen til nasjonale domstolers skjønnsmargin på området, fant Domstolen at Høyesterett hadde handlet i samsvar med sine forpliktelser etter artikkel 8. Domstolen konkluderte følgelig med at det ikke forelå krenkelse av artikkel 8.

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