La Corte europea dei diritti dell'uomo, con sentenza della V Sezione, del 19/7/2007, nel ricorso 69533/01, intervenne a riaffermare il principio della certezza del diritto, come patrimonio comune di tradizioni degli Stati contraenti, che sopporta eccezioni solo se giustificate dal sopraggiungere di rilevanti circostanze di ordine sostanziale
. Il tema è evidentemente collegato anche alla questione dei diritti quesiti dei c.d. avvocati-part-time, specie dopo l'intervento della Corte costituzionale con sent. 189/2001.
Leggi di seguito la massima e, in inglese, la sentenza per esteso ...

e per un commento scrivimi all'indirizzo perelli.maurizio@libero.it

Primato del diritto - Preambolo della Convenzione - Principio della certezza del diritto - Sentenza definitiva revisione - Trattamento pensionistico - Incidenza. (Convenzione europea dei diritti dell'uomo, art. 6; Protocollo n. 1, art. 1).

Il diritto a un'equa udienza dinanzi a un tribunale deve essere interpretato alla luce del Preambolo della Convenzione che, per quanto rileva in materia, afferma che il primato del diritto appartiene al patrimonio comune di tradizioni degli Stati contraenti. Un aspetto fondamentale di tale primato è il principio della certezza del diritto, il quale esige, tra l'altro, che un provvedimento giudiziario definitivo non può, di regola essere messo in discussione, specie se l'istanza di revisione miri a una nuova decisione sul caso. La revisione da parte di organismi giudiziari di grado elevato non deve mascherare un appello. Un'eccezione è ammissibile soltanto se giustificata dal sopraggiungere di rilevanti circostanze di ordine sostanziale. Se il provvedimento definitivo riconosce al ricorrente una posizione giuridicache rientra nell'ambito dell'art. 1, Protocollo n. 1, l'eventuale sua revisione non giustificata nei predetti termini, dà luogo alla violazoione di tale disposizione oltre che dell'art. 6. In particolare ciò accade là dove una sentenza definisca l'ammontare di una pensione - rispetto alla quale si fonda dunque una fondata pretesa di natura patrimoniale tutelata dall'art. 1, Protocollo n. 1 - e la ingiustificata

sentenza di revisione lo riduce retroattivamente.

EUROPEAN COURT OF HUMAN RIGHTS

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19.7.2007

Press release issued by the Registrar

Chamber judgments concerning

Croatia, Cyprus, Germany, Greece,

Lithuania, Romania, Russia and Turkey

The European Court of Human Rights has today notified in writing the following 20 Chamber judgments, of which only the friendly-settlement judgments are final.1

Repetitive cases2 and length-of-proceedings cases, with the Court’s main finding indicated, can be found at the end of the press release.

Podoreški v. Croatia (application no 13587/03) Friendly settlement

The applicant, Zorica Podoreški, is a Croatian national who lives in Sisak (Croatia).

From October 1989 to June 1996 Ms Podoreški was employed to look after Mrs Z. C.. The conditions of her contract included inheriting Z.C.'s flat, furniture and foreign currency savings, provided that she took care of Z.C. until her . Following Z.C.'s in June 1996, her husband and relatives brought civil proceedings against Ms Podoreški, claiming that the applicant had not fulfilled the obligations of her contract. In July 1999 the Sisak Municipal Court declared the contract null and void.

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, Mrs Podoreški alleged that the courts who had decided on her case had been biased as Z.C.'s husband and family were related to one of the Sisak County Court's judges.

The case has been struck out following a friendly settlement in which 7,000 euros (EUR) is to be paid for any non-pecuniary and pecuniary damage as well as costs and expenses. (The judgment is available only in English.)

Freitag v. Germany (no. 71440/01) Violation of Article 6 § 1 (fairness)

The applicant, Karl-Walter Freitag, is a German national who was born in 1954 and lives in Cologne (Germany). He is a shareholder of V-Holding AG, an insurance company based in Berlin. In February 1998 V-Holding AG was merged with another company, E-Versicherungsgruppe AG, based in Hamburg.

The case concerned commercial proceedings brought by Mr Freitag in March 1998 against E-Versicherungsgruppe AG in which he requested compensation for the loss in value of his shares caused by the merger. He first brought the proceedings before Hamburg Regional Court but, as they did not have jurisdiction, he requested his case-file to be transferred to Berlin Regional Court. However, his case was declared inadmissible as, by the time it had arrived at the Berlin court, the legal requirement of two months for submitting the case had expired.

Relying, in particular, on Article 6 § 1 (right of access to a court), Mr Freitag alleged that he had

been denied access to the domestic courts, notably that the Hamburg court had delayed the transfer of his case to the Berlin court by more than ten weeks.

The European Court of Human Rights found that the delays had been caused by the Hamburg court and that Mr Freitag could not have been expected to incur more court fees by bringing new proceedings before the Berlin court. Accordingly, the Court held that there had been a violation of Article 6 § 1. Mr Freitag was awarded EUR 2,000 in respect of pecuniary damage and EUR 4,823.38 for costs and expenses. The remainder of the application was declared inadmissible. (The judgment is available only in English.)

Kambangu v. Lithuania (no. 59619/00) Friendly settlement

The applicant, Pedro Katunda Kambangu, is an Angolan national who was born in 1968 and lives in Houston (United States of America).

On 10 March 1998 Mr Kambangu was arrested while trying to cross the border between Lithuania and Belarus. He was accused of violating Lithuanian immigration rules because he did not have a valid passport. He was first detained in police custody in Vilnius then transferred to the Pabrade Aliens Registration Centre. Having obtained a new passport from the Angolan Embassy in Moscow, he voluntarily left Lithuania in January 2000.

Relying on Article 5 §§ 1 and 4 (right to liberty and security), Mr Kambangu complained about his stay in the Aliens Registration Centre where he was subjected to a strict disciplinary regime, notably not being allowed to leave without a guard. He also alleged that there had been no judicial review of his detention.

The case has been struck out following a friendly settlement in which EUR 10,000 is to be paid for any non-pecuniary and pecuniary damage as well as costs and expenses. (The judgment is available only in English.)

(Mr Skuratov) Violation of Article 3 of Protocol No. 1

Krasnov and Skuratov v. Russia (nos. 17864/04 and 21396/04)

The applicants, Aleksandr Viktorovich Krasnov and Yuriy Ilyich Skuratov, are Russian nationals who were born in 1956 and 1952, respectively. They both live in Moscow.

The case concerned the applicants' complaint that they had been disqualified from the general elections to the State Duma because they had submitted inaccurate information in their applications to be registered as candidates. Mr Krasnov was accused of claiming to be Head of the District Council of the Presnenskiy District of Moscow, whereas at the time of his application, he had in fact been dismissed from that post. Mr Skuratov had allegedly declared that he was acting Head of the Law Department at Moscow State Social University whereas he had been transferred to a post of professor of the same department. He was also accused of not having confirmed that he was a member of the communist party. Ultimately, neither applicant took part in the elections.

They relied on Article 3 of Protocol No. 1 (right to free elections). Mr Skuratov also complained that he had been the only candidate nominated by the Communist Party to have been denied registration, in breach of Article 14 (prohibition of discrimination).

As concerned Mr Krasnov, the Court found that it was inconceivable that he could have been unaware of the fact that someone else had been appointed to his post. He had therefore submitted information which could have misled voters. The Court therefore held unanimously that there had been no violation of Article 3 of Protocol No. 1 concerning Mr Krasnov.

As concerned Mr Skuratov, the Court noted that the domestic courts had given conflicting reasons as to why they had believed that he had given incorrect information about his employment. In addition, those reasons had had no legal basis. Nothing suggested that he had acted in bad faith and, in any case, the argument that the difference between the post of professor and acting head of department could mislead voters, could not be taken seriously. It never having been claimed that he had not been a member of the Communist Party, the Court could not accept that the decision to disqualify him from the elections had been to prevent voters having misconceptions about his political leanings. Accordingly, the Court found that there had been a violation of Article 3 of Protocol No. 1 of concerning Mr Skuratov and awarded him EUR 8,000 in respect of non-pecuniary damage and EUR 12,000 for costs and expenses. It

further held that there was no need to examine separately his complaint under Article 14. (The judgment is available only in English.)

Violation of Article 6 § 1 (fairness)

Kondrashina v. Russia (no. 69533/01) Violation of Article 1 of Protocol No. 1

The applicant, Nadezhda Korneyevna Kondrashina, was a Russian national who was born in 1934 and lived in Belgorod (Russia). She died in December 2005 and her husband decided to continue with the application.

This case concerned Ms Kondrashina’s complaint that a final judgment in her favour in July 1999 concerning her old age-pension had been quashed because the domestic courts had decided on a new interpretation of the Law on the Calculation and Upgrading of State pensions.

She relied on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property).

The Court found that the domestic courts had not given sufficient reasons to justify the reopening of the applicant’s case following the final and binding judgment in her favour and held unanimously that there had been a violation of Article 6 § 1. The Court further noted that the applicant, as a result, had retrospectively been deprived of the pension to which she had been entitled and held that there had been a violation of Article 1 of Protocol No. 1. The applicant’s husband was awarded EUR 2,000 in respect of non-pecuniary damage. (The judgment is available only in English.)

No violation of Article 3

Rozhkov v. Russia (no. 64140/00) Violation of Article 5 § 4

The applicant, Yevgeniy Ivanovich Rozhkov, is a Russian national who was born in 1966 and lives in Belgorod (Russia). He is a former employee of the Belgorod Customs Office, where he worked as Deputy Head of the Investigations Department.

In October 1999 Mr Rozhkov was arrested and detained on remand on charges of bribery. In July 2000 he was found guilty as charged and sentenced to four years' imprisonment. He was released on parole in September 2002. Prior to the criminal proceedings brought against him he had suffered from concussion and was suspected with suffering from glaucoma.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Rozhkov complained that he had been denied adequate medical assistance for his illnesses during his pre-trial detention. He further complained that the examination of an appeal he had made on 25 April 2000 contesting the extension of his detention on remand had been delayed, in breach of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court).

The Court noted that Mr Rozhkov had already been suffering from eye problems and concussion before having been arrested. It also observed that, during his detention, he had been examined by a neurologist and had received treatment. As concerned the prison authorities' refusal to comply with the applicant's request for eye surgery, the Court found that nothing in the case-file had suggested that the applicant's glaucoma had required urgent treatment or that the refusal to operate had caused his condition to deteriorate. The Court therefore held unanimously that there had been no violation of Article 3.

Mr Rozhkov's complaint of 25 April 2000 had reached the district court on 26 April but was not examined until one month later. His complaint not having involved complex issues, the Court considered that his request for release had not been examined "speedily" and that there had therefore been a violation of Article 5 § 4. Mr Rozhkov was awarded EUR 500 in respect of non-pecuniary damage and EUR 100 for costs and expenses. (The judgment is available only in

English.)

Feyzi Yildirim v. Turkey (no. 40074/98) Violation of Article 2

The applicant, Feyzi Yildirim, is a Turkish national who was born in 1960 and lives in Istanbul. He is the son of Mr Yildirim, who died on 7 February 1996 of complications following a brain haemorrhage.

On 7 January 1996, after shots had been fired at a gendarmerie post in the province of Diyarbakir (Turkey), two non-commissioned officers stationed there went out on patrol under the orders of a Captain Akgün. They went to the draper's shop of Mr Yildirim where words were exchanged with the shopkeeper and three of his customers. There is vehement disagreement between the parties concerning the allegation that Captain Akgün administered a violent beating to Mr Yildirim, then aged 67, but it is not in dispute that he upbraided him. On 3 February of that year Mr Yildirim was taken into hospital in a coma and died four days later. According to the forensic medical officer, an injury suffered about a month before could have been the cause of . On 9 February 1996 the applicant and his mother lodged a formal complaint against Captain Akgün. On 14 June 1999 the assize court held that the charge of unintentional homicide could not be made out but sentenced him to the minimum penalty of three months' imprisonment for inflicting ill-treatment in the performance of his official duties. That sentence was later reduced to two months and fifteen days and commuted to a fine of approximately EUR 0.68, suspended.

The applicant relied on Article 2 (right to life), alleging that his father had died as a result of the blows inflicted by Captain Akgün and complaining of the inadequacy and partiality of the investigations and criminal proceedings conducted in connection with his father's . He further relied on Article 6 § 1 (right to a fair trial) and Article 13 (right to an effective remedy).

The Court accepted that it could not be established from the evidence in the case that the applicant's father had died as a result of blows inflicted by Captain Akgün. It observed however that the obligation to protect the right to life under Article 2 required by implication that there should be some form of effective official investigation when individuals had been killed in suspicious circumstances. But there was nothing in the case to indicate that any measure had been taken to ensure a balance between the interests of Captain Akgün and those of the witnesses for the prosecution, to whose testimony no importance was attached. On the other hand, the Turkish courts had showed clemency to Mr Akgün on account of his "good conduct" during the trial. The Court considered that the Turkish criminal justice system had proved to be

far from rigorous. It accordingly held by six votes to one that there had been a violation of Article 2 and unanimously that it was no longer necessary to rule separately on the remaining complaints. By six votes to one the Court awarded EUR 15,000 to the applicant for non-pecuniary damage; of that sum he is to keep EUR 2,500 for himself and hold the remaining EUR 12,500 for his late father's other dependants. (The judgment is available only in French).

Violation of Article 5 § 3

Kemal Koçak v. Turkey (no. 40991/98) Violation of Article 6 § 1 (fairness)

The applicant, Kemal Koçak, is a Turkish national who was born in 1960 and lives in Van (Turkey).

In September 1991, following an operation against the PKK (Workers' Party of Kurdistan), the applicant was arrested in possession of a handgun belonging to the organisation. The national courts placed him in pre-trial detention on 9 October of that year and sentenced him in May 1999 to 12 years and six months' imprisonment.

The applicant complained about the length of his pre-trial detention, asserting that it had been contrary to Article 5 § 3 (right to liberty and security). He further relied on Article 6 § 1 (right to a fair trial within a reasonable time), alleging that the national security court which had tried and convicted him was not an "independent and impartial tribunal" and complaining about the length of the criminal proceedings. He also asserted that he had been convicted on the basis of evidence collected illegally while he was in police custody.

The Court noted that the applicant's pre-trial detention had lasted more than seven years and held unanimously that there had been a violation of Article 5 § 3. After examining the case it considered that the Turkish Government had not put forward any fact or argument which could lead it to a different conclusion and held unanimously that there had been a violation of Article 6 § 1 as regards the national security court's lack of independence and impartiality and the length of the proceedings. It further held that it was not necessary to examine separately the complaint concerning the fairness of the proceedings and awarded the applicant EUR 7,000 for non-pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in French.)

Tus and Others v. Turkey (nos. 7144/02 and 39865/02) Violation of Article 5 § 3

The eight applicants, Mr Izettin Tus, Mr Yunus Isler, Mr Abdulsamet Rahat, Mr Ali Vesek, Mr Ali Poyraz, Mr Mahmut Sigak, Ms Besna Rahat and Ms Evin Tunç are all Turkish nationals either living in or imprisoned in Izmir (Turkey).

They were all arrested in connection with operations against the PKK (Workers' Party of Kurdistan).

The applicants Izzettin Tus, Yunus Isler, Abdulsamet Rahat, Ali Poyraz, Besna Rahat and Evin Tunç complained that they had not been brought promptly before a judge or other officer after their arrest, as required by Article 5 § 3. Yunus Isler, Abdulsamet Rahat, Besna Rahat and Evin Tunç, complained of a violation of Article 8 (right to respect for private and family life).

The Court declared the complaint under Article 5 § 3 admissible. However, it declared inadmissible the complaints of Mr Ali Vesek and Mr Mahmut Sigak and the complaint concerning a violation of Article 8.

It held unanimously that there had been a violation of Article 5 § 3, noting in particular that the applicants had remained in police custody for at least four days. It awarded EUR 1,000 to each of the applicants Izzettin Tus, Yunus Isler, Abdulsamet Rahat and Besna Rahat and EUR 500 to each of the applicants Ali Poyraz and Evin Tunç for non-pecuniary damage; it awarded them EUR 1,000 jointly for costs and expenses, less the EUR 715 paid by the Council of Europe in legal assistance. (The judgment is available only in French.)

Repetitive cases

In the following cases the Court has reached the same findings as in similar cases raising the same issues under the Convention:

Violation of Article 1 of Protocol No. 1

Popescu and Dasoveanu v. Romania (no. 24681/03)

Rusu and Others v. Romania (no. 4198/04)

Violation of Article 6 § 1 (fairness)

Bakharev v. Russia (no. 21932/03) Violation of Article 1 of Protocol No. 1

Zverev and Others v. Russia (no. 13296/03)

Violation of Article 6 § 1 (fairness)

Halis Tekin v. Turkey (no. 64570/01) No violation of Article 6 § 1 (length)

Violation of Article 6 § 1 (fairness)

Garbul v. Turkey (no. 64447/01)

Öz and Yürekli v. Turkey (no. 44662/98)

Violation of Article 6 § 1 (fairness)

Marti v. Turkey (no. 9709/03)

Mesut Yurtsever v. Turkey (no. 42086/02)

Length-of-proceedings cases

In the following cases, the applicants, relying on Article 6 § 1 (right to a fair hearing within a reasonable time), complained in particular about the excessive length of (non-criminal) proceedings. The remainder of the application in the case of Aresti Charalambous v. Cyprus was declared inadmissible.

Violation of Article 6 § 1 (length)

Aresti Charalambous v. Cyprus (no. 43151/04)

Zisis v. Greece (no. 77658/01)

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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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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.

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.

2 In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

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