966
16.12.2009

Press release issued by the Registrar

Decision on admissibility

J.H. and 23 Others v. France
*(applications no. **49637/09**, 49644/09, 49654/09, 49666/09, 49674/09, 49683/09, 49688/09, 49694/09, 49698/09, 49700/09, 49703/09, 49720/09, 49725/09, 49731/09, 49741/09, 49749/09, 49788/09, 49796/09, 49800/09, 49806/09 et 49992/09)*

24 APPLICATIONS, ALLEGING THAT COMPENSATION PAID TO ORPHANS OF WW2 DEPORTEES WAS INSUFFICIENT, DECLARED INADMISSIBLE

Principal facts

The applicants are nationals of various countries whose parents (father, mother or both) were, during the Second World War, arrested, interned and then deported in trains run by the SNCF (French national railways) to concentration camps from which they never returned.

Under a decree of 13 July 2000, which introduced a compensation scheme for orphans whose parents had been the victims of anti-Semitic persecution, the applicants were paid compensation in respect of the death of their parents: either a lump sum of 27,000 euros (EUR) or a life annuity of EUR 468.78 per month.

Taking the view, however, that those sums did not provide sufficient redress for the non-pecuniary damage caused by the death of their parents, they claimed compensation for such damage from the State and the SNCF. When both refused, they applied in 2007 to various administrative courts for an order finding that the State and the SNCF were jointly and severally liable for the payment of damages. One of the courts in question sought an opinion from the *Conseil d'Etat* (under a provision of the Code of Administrative Justice that enabled tribunals of fact to seek such an opinion if they were confronted with a new legal question that presented a serious difficulty and arose in many disputes). On 16 February 2009 the *Conseil d'Etat* gave its opinion, recognising that the French State's responsibility could be engaged in respect of the facts complained of by the applicants but that, contrary to their allegations, they had already received compensation for the damage they had suffered, both pecuniary and non-pecuniary.

Further to this opinion, the administrative courts dismissed the applicants' claims, finding that the subject-matter of their grievance had already given rise to compensation on the basis of the various texts adopted by France in that area since the end of the Second World War (providing redress that was both financial and moral, in particular through political statements).

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained that they had not received compensation from the French State in respect of the non-pecuniary damage caused to them by the death of their parents.

Their applications were lodged with the European Court of Human Rights on 24 July 2009, 31 July 2009 and 9 September 2009.

The decision was given by a Chamber composed as follows:

Peer **Lorenzen** (Denmark), ***President,***
Renate **Jaeger** (Germany),
Jean-Paul **Costa** (France),
Karel **Jungwiert** (Czech Republic),
Rait **Maruste** (Estonia),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia")
Zdravka **Kalaydjieva** (Bulgaria), ***Judges,***
and also Claudia **Westerdiek**, ***Section Registrar***.

Decision of the Court

The Court first reiterated that there was no general obligation under the Convention for States to compensate wrongs inflicted in the past under the general cover of State authority. However, once a compensation scheme was put in place by a government or with a government's consent, and regardless of the nature of the benefits granted in that connection, issues of compliance with Article 1 of Protocol No. 1, in particular, might arise. On the other hand, the Court pointed out that, in principle, no challenge to eligibility criteria as such was allowed.

As regard the present applications, the Court found that the decree of 13 July 2000 had not specified whether the compensation granted had been intended to cover solely the pecuniary damage arising from the death of the applicants' parents (as they submitted) or whether it encompassed all heads of damage. However, the *Conseil d'Etat* – followed by the administrative courts to which the applicants had referred their cases – had expressly stated that the whole series of measures implemented by France had to be regarded as allowing compensation for damage of any nature caused by State actions that had assisted in the deportation. The Court pointed out, however, that its task was not to take the place of the domestic authorities, its role being confined to ascertaining whether the effects of their decisions were compatible with the Convention. The Court further observed, like the administrative courts, that the measures implemented by the State to provide redress for the damage sustained had not been limited to financial compensation alone. The French State had taken other formal measures, both normative and political, to acknowledge its role in the deportation and the damage sustained by the applicants.

Being mindful of the extent of the damage sustained by the applicants, as a result of the deportation and the atrocities committed against their parents, the Court observed, however, like the domestic courts, that the measures implemented by France, taken as a whole, encompassed their non-pecuniary damage. The Court thus found, unanimously and under Article 35 §§ 3 and 4 (conditions of admissibility), that the applicants' complaint had to be declared inadmissible, being manifestly ill-founded.

***

The decision is available only in French. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (http://www.echr.coe.int).

Press contacts
Frédéric Dolt (tel: + 33 (0)3 90 21 53 39) or

Stefano Piedimonte (tel: + 33 (0)3 90 21 42 04)
Tracey Turner-Tretz (tel: + 33 (0)3 88 41 35 30)
Kristina Pencheva-Malinowski (tel: + 33 (0)3 88 41 35 70)
Céline Menu-Lange (tel: + 33 (0)3 90 21 58 77)
Nina Salomon (tel: + 33 (0)3 90 21 49 79)
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.*

- -