



Judgments of 10 May 2016

The European Court of Human Rights has today notified in writing five judgments¹:

three Chamber judgments are summarised below; for one other, in the case of *Derungs v. Switzerland* (application no. 52089/09), a separate press release has been issued;

one Committee judgment, which concerns issues already submitted to the Court, can be consulted on [Hudoc](#) and does not appear in this press release.

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

Topekhin v. Russia (application no. 78774/13)

The case concerned the conditions of detention and medical care of a paraplegic inmate.

The applicant, Vladimir Topekhin, is a Russian national who was born in 1982 and until his arrest lived in Moscow.

Mr Topekhin was arrested in July 2013 on suspicion of aggravated fraud and placed in police custody. His detention was repeatedly extended pending investigation and trial, the courts citing the seriousness of the charges against him as well as the risk of him absconding, as he had gone on the run previously and had been found in the possession of a forged passport. He was convicted as charged in January 2014 and sentenced to six years' imprisonment in a correctional colony. This judgment was upheld in February 2014, and the sentence reduced to four years. He was held in various remand prisons in Moscow until his transfer in March 2014 to serve his sentence in a correctional colony in Kostroma, over 300 kilometres away.

Mr Topekhin suffered from back disorders, having sustained serious back injuries in 2008 and 2010, which were aggravated by a fall in August 2013 in detention. This new injury in detention resulted in him losing the use of his legs. In October 2013 he complained to the prison doctor of pain in his back and abdomen as well as headaches and was prescribed with drugs. Shortly afterwards, he was admitted to the prison medical unit, seen by various doctors including a neurologist, and prescribed with comprehensive treatment. His treatment continued throughout his ensuing detention on remand and included several courses of inpatient treatment in various medical institutions.

Mr Topekhin made a number of complaints under Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights as concerned: the alleged inadequate medical care he had received in detention, claiming that his health had significantly deteriorated as a result; the conditions of his detention on remand, submitting in particular that, following the paralysis in his legs from August 2013, he had been confined to bed and had only been assisted by other inmates for his daily needs; and, the conditions of his 16-hour transfer to the correctional colony in March 2014 in standard train carriages and prison vans without special equipment for a partly paralysed detainee such as himself. Further relying on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) and Article 5 § 4

¹ 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

(right to have lawfulness of detention decided speedily by a court) of the European Convention, he also complained about the excessive length of his detention, which had continually been extended despite the serious state of his health, as well as about delays in the examination of his appeals against two of his detention orders of July and September 2013.

No violation of Article 3 – on account of the quality of medical treatment provided to Mr Topekhin in detention

Violation of Article 3 (inhuman and degrading treatment) – on account of the conditions of Mr Topekhin's detention in the remand prisons

Violation of Article 3 (inhuman and degrading treatment) – on account of the conditions of Mr Topekhin's transfer to the correctional colony

No violation of Article 5 § 3

Violation of Article 5 § 4

Just satisfaction: 19,500 euros (EUR) in respect of non-pecuniary damage

Babajanov v. Turkey (no. 49867/08)

The case essentially concerned the alleged forced illegal deportation of an Uzbek asylum seeker from Turkey to Iran.

The applicant, Mohammad Kuranbay Babajanov, is an Uzbek national who was born in 1975 and lives in Turkey.

Mr Babajanov entered Turkey illegally in November 2007, having fled Uzbekistan in 1999 out of fear of persecution because he is a Muslim. Travelling via Tajikistan, Afghanistan and Pakistan, he eventually settled in Zahedan in Iran from 2005 to 2007 before fleeing for Turkey. On arrival in Turkey he applied for refugee status to the United Nations High Commissioner for Refugees (UNHCR) as well as to the Turkish authorities. He was given a temporary residence permit until 24 September 2008 and ordered to report to the police station three times a week for signature.

Mr Babajanov claims that on 12 September 2008, when going to the police station for signature, he was placed in detention along with 29 other asylum seekers. They were driven to the border the same evening and forcibly deported to Iran. Captured by people smugglers and made to pay a ransom, they eventually managed a few days later to enter Turkey illegally again. He submits that, since then, he has been living in hiding in Turkey. His application for refugee status from the UNHCR is still under consideration and he has not received any information from the Turkish authorities as to his asylum request.

The Government submit that Mr Bajanov was deported to Iran, a safe third country, in accordance with domestic law following an assessment of his asylum claim. Furthermore, if he was still in Turkey, it was open to him to claim international protection under new legislation which had entered into force in April 2014 (the Foreigners and International Protection Act, Law no. 6458).

Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Babajanov complained about his summary deportation to Iran in September 2008 without an assessment of his asylum claim and without a deportation order, despite the fact that he had had a valid residence permit. He also alleged under Article 3 that he was currently still under a threat of deportation to Iran or Uzbekistan where he would be at a clear risk of death or ill-treatment on account of his political opinions and religious beliefs. Mr Babajanov further made a number of complaints under in particular Article 5 §§ 1 and 2 (right to liberty and security), namely that his detention prior to his removal on 12 September 2008 had been unlawful and that he had not been informed of the reasons for his detention pending deportation.

Violation of Article 3 – on account of Mr Babajanov's deportation to Iran on 12 September 2008

Violation of Article 5 § 1

Violation of Article 5 § 2

Just satisfaction: EUR 6,500 (non-pecuniary damage) and EUR 2,202 (costs and expenses)

Kalkan v. Turkey (no. 37158/09)*

The applicant, Ramazan Kalkan, is a Turkish national who was born in 1947 and lives in Mardin (Turkey).

The case concerned the death of Mr Kalkan's son, Nusret Kalkan, who had been shot dead by a gendarme, and the ensuing criminal proceedings.

On 28 August 2008, while he was going to meet his family at a picnic area, Nusret Kalkan was wounded by a shot fired by the security forces; he died from his injuries on the way to hospital. Nusret Kalkan had been wanted, since 3 July 2007, for being an active member of the illegal armed organisation PKK (the Kurdistan Workers' Party) and for participating in a number of terrorist acts. The public prosecutor's office opened an investigation of its own motion and interviewed the members of Mr Kalkan's family who had been present at the scene of the incident, together with two gendarmes who had taken part in the operation. Mr Kalkan's relatives pointed out in particular that they had heard a single shot, without any warning. The gendarmes explained, among other things, that the deceased had been warned before the shot was fired. The official report by the gendarmerie also stated that Nusret Kalkan had been loudly ordered to surrender immediately, but that he had tried to escape and that a gendarme had injured him with a single shot.

On 25 September 2008 Mr Kalkan filed a criminal complaint, asserting that the security forces could have arrested his son by a different means, in particular without firing at him. On 12 January 2009 the public prosecutor discontinued the proceedings on the grounds that the police had used force in accordance with the anti-terrorism legislation. Mr Kalkan challenged that decision and the Mardin Assize Court quashed the discontinuance order. On 15 October 2009 the Midyat Assize Court decided to grant a discharge to the gendarme who shot Nusret Kalkan, finding that he had acted within the law. That same day Mr Kalkan, who had intervened in the criminal proceedings as a third party, appealed on points of law. On 4 July 2012 the Court of Cassation upheld the judgment of the court below, interpreting it as a decision of acquittal.

Relying in particular on Article 2 (right to life), Mr Kalkan complained about the death of his son, which, in his opinion, had been caused by an excessive use of force. He alleged that the security forces had used lethal force against his son, without that being absolutely necessary. In addition, Mr Kalkan argued that the criminal proceedings initiated by the authorities had not been conducted expeditiously.

Violation of Article 2 (right to life)

Violation of Article 2 (investigation)

Just satisfaction: EUR 65,000 (non-pecuniary damage)

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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.