



Judgments concerning Germany and Ukraine

The European Court of Human Rights has today notified in writing the following seven Chamber judgments¹, none of which is final. The judgments are available only in English.

The Court has also delivered today its judgment in the case of Garnaga v. Ukraine (no. 20390/07), for which a separate press release has been issued.

Radu v. Germany (application no. 20084/07)

The applicant, Fredy Radu, is a German national who was born in 1962 and is currently detained in a Psychiatric Hospital in Riedstadt (Germany). He was convicted of homicide and sentenced to eight years and six months' imprisonment in 1995. At the same time, the trial court ordered his placement in a psychiatric hospital, where he was transferred in 1998. The case concerned the proceedings for review of his continued confinement, which had been confirmed by a final court decision in November 2006. Relying on Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, Mr Radu complained that his detention had been prolonged even though an expert consulted by the courts had found that he had not suffered from a pathological mental disorder.

No violation of Article 5 § 1

Barilo v. Ukraine (no. 9607/06)

The applicant, Valentina Barilo, is a Ukrainian national who was born in 1970 and lives in Yevpatoriya (Ukraine). In October 2006, she was convicted of embezzlement of property through abuse of a position of power and sentenced to three years' imprisonment with one year's probation. Suffering from diabetes and other chronic illnesses, she complained that she had not been provided with appropriate medical assistance while in pre-trial detention in February 2006 and that she had not had an effective remedy in respect of that complaint. She alleged a violation of Article 3 (prohibition of torture and of inhuman or degrading treatment) and of Article 13 (right to an effective remedy). She further alleged a breach of Article 5 § 1 (c) (right to liberty and security), complaining in particular that there had been no reason for her placement in pre-trial detention for ten days in February 2006.

Violation of Article 3 (lack of adequate medical assistance + conditions of detention)

Violation of Article 5 § 1

Violation of Article 13

Just satisfaction: EUR 10,000 (non-pecuniary damage)

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a 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

Chorniy v. Ukraine (no. 35227/06)

The applicant, Igor Chorniy, is a Ukrainian national who was born in 1965 and lives in Khodorkivtsi (Ukraine). A business owner at the time, he was found guilty of non-payment of wages to his employees between November 2001 and January 2004 and ordered to pay a fine in a judgment eventually upheld in April 2005. Relying in particular on Article 6 § 3 (b) (right to adequate time and facilities for preparation of defence), he complained that he had been unable to effectively appeal against the Ukrainian courts' judgments in his case, as he had not been provided in due time with copies of the judgments against him.

Violation of Article 6 § 3 (b) taken together with Article 6 § 1

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Gavula v. Ukraine (no. 52652/07)

The applicant, Vitaliy Gavula, is a Ukrainian national who was born in 1977 and lives in Berezhinka (Ukraine). He was arrested in February 2003 on suspicion of robbery and, convicted as charged in March 2010, was sentenced to eight and half years' imprisonment. He was released on probation in March 2011. The case principally concerned his complaints about the conditions of his detention – overcrowding and poor hygiene – between February 2003 and August 2010, the unlawfulness of his arrest and the excessive length of his pre-trial detention and the criminal proceedings against him. He relied on Article 3 (prohibition of inhuman or degrading treatment), Article 5 §§ 1 and 3 (right to liberty and security) and Article 6 § 1 (right to a fair trial within a reasonable time). Lastly, relying on Article 34 (right of individual petition), he also complained that the authorities had failed to provide him with copies of documents necessary for lodging his application with the European Court of Human Rights.

Violation of Article 3 (conditions of detention)

Violation of Article 5 § 1

Violation of Article 5 § 3

Violation of Article 6 § 1

Violation of Article 34

Just satisfaction: EUR 10,000 (non-pecuniary damage)

Komarova v. Ukraine (no. 13371/06)

The applicant, Svetlana Komarova, is a Ukrainian national who was born in 1960 and lives in Dnipropetrovsk (Ukraine). She is a lawyer. She was arrested in April 2004 for fraud as well as for allegedly attempting to bribe a judge. In April 2009 she was ultimately found guilty of fraud and sentenced to just over five years' imprisonment. Relying on Article 3 (prohibition of inhuman or degrading treatment), she alleged inadequate medical care in detention for heart problems and high blood pressure which was causing her to lose her sight. She also alleged that her state of health had deteriorated as she had been made to share a cell with detainees who had been constantly smoking and that she had had a miscarriage in April 2004 due to stress. Further relying on Article 5 § 3 (right to liberty and security), she also alleged that the length of her pre-trial detention had been excessive.

No violation of Article 3

Violation of Article 5 § 3

Just satisfaction: The applicant did not submit a claim for just satisfaction.

Maksymenko and Gerasymenko v. Ukraine (no. 49317/07)

The applicants, Mykola Maksymenko and Volodymyr Gerasymenko, are two Ukrainian nationals who were born in 1958 and 1963, respectively. Mr Maksymenko lives in Malyn (Ukraine). Mr Gerasymenko died in 2009 and his widow, Lyudmyla Gerasymenko, pursued the application on his behalf. The case concerned a hostel formerly owned by the State which the two men had bought in 2004. Relying in particular on Article 1 of Protocol No. 1 (protection of property), they complained that they had lost ownership of the hostel without compensation in 2006 when the domestic courts invalidated a decision of 1995 to privatise the hostel, as well as all subsequent transfers of ownership.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 6,127 to the applicants jointly (pecuniary damage) and EUR 3,000 each (non-pecuniary damage)

Samoylovich v. Ukraine (no. 28969/04)

The applicant, Nikolay Samoylovich, is a Ukrainian national who was born in 1969 and lives in Simferopol (Crimea, Ukraine). In August 1999, he was arrested and placed in pre-trial detention on suspicion of robbery, of which he was eventually convicted in November 2004 and sentenced to seven years' imprisonment. Relying on Article 3 (prohibition of inhuman or degrading treatment), he complained about the degrading conditions in the detention facility where he had been detained from August 1999 until his release in August 2006 after having served his sentence, in particular because of overcrowding and poor hygiene conditions. Relying on Article 5 §§ 1 (c) and 3 (right to liberty and security), he complained that his pre-trial detention had been ordered unlawfully and had been unjustifiably long. Finally, under Article 6 § 1 (right to a fair trial within a reasonable time), he complained in particular of the length of the criminal proceedings against him in the case concerning the alleged robbery.

Violation of Article 3 (conditions of detention)

Violation of Article 5 § 1 (c)

Violation of Article 5 § 3

Violation of Article 6 § 1

Just satisfaction: EUR 15,000 (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.