



Judgments concerning Azerbaijan, Estonia, France, Russia, 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 in French are indicated with an asterisk (*).

The Court has also delivered today its judgment in the case of Lavidia and Others v. Greece (application no. 7973/10), for which a separate press release has been issued.

Zeynalov v. Azerbaijan (application no. 31848/07)

The applicant, Ahmadshah Zeynalov, is an Azerbaijani national who was born in 1935 and lives in Siyazan (Azerbaijan). In December 2004 he was found guilty of having cultivated a plot of land which did not belong to him, and sentenced to pay a fine. The judgment was eventually upheld by the Supreme Court in October 2006. Relying on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, Mr Zeynalov complained that one of the Supreme Court judges who had sat on the panel which had handed down the final judgment in his case had already taken part in an earlier decision concerning his cassation appeal and could therefore not have been impartial.

Violation of Article 6 § 1

Just satisfaction: EUR 1,000 (costs and expenses)

Martin v. Estonia (no. 35985/09)

The applicant, Keijo Martin, is an Estonian national who was born in 1988. He is currently serving a ten-year prison sentence for a murder committed in 2006, his conviction for that offence having been upheld by the Supreme Court in January 2009. Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), he complained that his defence rights had been violated as his lawyer had been denied access to him during the pre-trial proceedings and his conviction had been based on evidence obtained during those proceedings.

Violation of Article 6 §§ 1 and 3 (c)

Just satisfaction: EUR 4,500 (non-pecuniary damage) and EUR 2,821,54 (costs and expenses)

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

Rafaa v. France (no. 25393/10)*

The applicant, Rachid Rafaa, is a Moroccan national who was born in 1976 and lives in Metz (France). The case concerned his extradition to Morocco, which he claimed would jeopardise his life and safety. After arriving in France illegally from Morocco, where he alleged he had been detained and tortured by the secret services because of his support for the Sahrawi cause, Mr Rafaa was apprehended and placed in administrative detention. When the Moroccan authorities issued an international arrest warrant against him for acts of terrorism, he was imprisoned with a view to his extradition in 2009. The French courts approved the extradition. The applicant appealed but his appeal was dismissed in 2010. The French authorities issued a decree with a view to his extradition, and his appeal to the *Conseil d'État* was rejected in 2011. In the meantime Mr Rafaa had also applied for asylum, but that application was rejected in 2010, as was his application for legal aid to appeal on points of law. The applicant alleged in particular that his extradition to Morocco would expose him to risks of treatment contrary to Article 3 (prohibition of torture and inhuman or degrading treatment).

Violation of Article 3 (in the event of the applicant's expulsion to Morocco)

Interim measure (Rule 39 of the Rules of Court) – not to expel Mr Rafaa – still in force until judgment becomes final or until further order.

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

Davitidze v. Russia (no. 8810/05)

The applicant, Levan Davitidze, is a Georgian national who was born in 1960. In a judgment of April 2004, upheld in August 2004, he was convicted of the procurement, possession and supply of heroin. The conviction of procurement and possession of drugs was excluded in a supervisory review by the presidium of the Moscow City Court in March 2009, and his prison sentence was reduced from eight years to seven years and six months. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Davitidze complained that during and following his arrest on 20 August 2003 he had been ill-treated by police officers – he alleged in particular that he had been hit with a gun handle and that a suffocating technique had been used on him – and that there had been no effective investigation into those complaints.

Two violations of Article 3 (ill-treatment + ineffective investigation)

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 2,130 (costs and expenses)

Malofeyeva v. Russia (no. 36673/04)

The applicant, Antonina Malofeyeva, is a Russian national who was born in 1953 and lives in Irkutsk (Russia). Charged with fraud for allegedly misappropriating money in the private company for which she had worked, she was placed in detention on remand in November 2003, where she remained until her release in May 2004. In a judgment of September 2007, upheld in July 2008, she was acquitted of the fraud charges. While the criminal proceedings against her were still pending, Ms Malofeyeva was arrested again on 7 June 2005, together with two friends, for organising a demonstration outside the Federal Judges Qualifications Board building in Moscow to protest against the allegedly "unlawful actions of public authorities and corruption". In a court hearing on the same day, Ms Malofeyeva was found guilty of the administrative offence of non-compliance with a lawful order by a police officer and sentenced to seven days' detention. Relying in particular on Article 5 §§ 2 and 4 (right to liberty and security), Ms Malofeyeva complained that she had not been promptly informed of the reasons for her arrest in November 2003 and that her appeal against her detention order had not been examined

speedily. Relying on Article 6 §§ 1 and 3 (right to a fair trial), she complained that in the proceedings concerning the alleged administrative offence she had not had a fair and public hearing. Lastly, she complained that the dispersal of the demonstration by the police and her arrest and prosecution for an administrative offence had been in breach of Article 10 (freedom of expression) and Article 11 (freedom of assembly and association).

Violation of Article 5 § 2

Violation of Article 5 § 4

Violation of Article 6 §§ 1 and 3

Violation of Article 11, assessed in the light of Article 10

Just satisfaction: The applicant did not submit a claim for just satisfaction within the time-limit set.

OOO 'Vesti' and Ukhov v. Russia (no. 21724/03)

The applicants in this case are a Russian limited liability company based in Kirov (Russia), which publishes the newspaper Gubernskie Vesti, and one of the newspaper's journalists, Sergey Ukhov, a Russian national who was born in 1951 and lives in Kirov. The case concerned defamation proceedings following the publication of an article written by Mr Ukhov in August 2002 which had made critical statements about a high-ranking local official and his involvement in a regional cultural project. The newspaper's editorial board and Mr Ukhov were ordered to pay the plaintiff damages, and the newspaper was ordered to publish a retraction statement drafted by the plaintiff, in court decisions upheld in substance in December 2002. The applicants complained that those decisions had violated their rights under Article 10 (freedom of expression). They also complained that the courts which had examined the defamation claim had been biased and that the principles of adversarial proceedings and equality of arms had been breached, contrary to Article 6 § 1 (right to a fair hearing).

No violation of Article 10

No violation of Article 6 § 1 (as regards both the alleged partiality of the courts and the principles of adversarial proceedings and equality of arms)

Nataliya Mikhaylenko v. Ukraine (no. 49069/11)

The applicant, Nataliya Mikhaylenko, is a Ukrainian national who was born in 1971 and lives in Simferopol (Crimea, Ukraine). As she was suffering from a severe mental illness, Ms Mikhaylenko's father applied to the courts in 2007, seeking to deprive her of her legal capacity. Following a forensic psychiatric expert's opinion, the courts granted her father's request in July 2007. When her health improved, Ms Mikhaylenko applied to have her legal capacity restored. Relying on Article 6 § 1 (right of access to court), Ms Mikhaylenko complained that the district court had rejected her application in November 2010 without having considered it on the merits, as under the Ukrainian Code of Civil Procedure an incapacitated person is not entitled to submit such an application. The decision was eventually upheld in March 2011.

Violation of Article 6 § 1

Just satisfaction: EUR 3,600 (non-pecuniary damage) and EUR 1,038 (costs and expenses)

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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.