



Judgments concerning Azerbaijan, Belgium, Croatia, France, Greece, Russia, and Ukraine

The European Court of Human Rights has today notified in writing the following 12 judgments, of which two (in italics) are Committee judgments and are final. The others are Chamber judgments¹ and are not final.

One repetitive case² and one length-of-proceedings case, with the Court's main finding indicated, can be found at the end of the press release. The judgments in French are indicated with an asterisk (*).

The Court has also delivered today its judgment in the case of Blokhin v. Russia (application no. 47152/06), for which a separate press release has been issued.

Chankayev v. Azerbaijan (application no. 56688/12)

The applicant, Gaji Chankayev, is a Russian national who was born in 1967 and is currently detained in Baku. The case concerned the extradition of Mr Chankayev to Russia to serve a prison sentence imposed by the Russian courts. After fighting as a Chechen rebel in Russia, Mr Chankayev fled to Azerbaijan in 2002. He was convicted in 2006 for acts committed while in Azerbaijan, including founding an illegal armed group and illegal possession of firearms. Later that year he was temporarily extradited to Russia, in order to face charges for his activities as a Chechen rebel. He was convicted of a number of offences, including being a member of an armed group that fought against the Russian state, and sentenced to a total of six years in prison. He was then returned to Azerbaijan to serve the remainder of the sentence imposed by the Azerbaijani courts. In June 2012 the Russian authorities requested that Mr Chankayev be extradited in order to serve his Russian sentence, and this request was granted in August 2012. Mr Chankayev challenged the extradition, claiming that there was a real risk that he would be subjected to ill-treatment if extradited to Russia. However, he was unsuccessful in the Azerbaijan courts, and his final appeal was dismissed on 3 September 2012. The enforcement of his extradition was stayed following an interim measure granted by the European Court of Human Rights (under Rule 39 of its Rules of Court) indicating to the Azerbaijan government that Mr Chankayev should not be extradited to Russia for the duration of the proceedings before the Court. Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights and Article 13 (right to an effective remedy), Mr Chankayev complained that his extradition to Russia would put him at imminent risk of torture and that he had had no effective remedy to challenge his extradition in the Azerbaijani courts on this ground.

No violation of Article 3 – in the event of Mr Chankayev's being extradited to Russia

Violation of Article 13 in conjunction with Article 3

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

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

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

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

M.D. v. Belgium (no. 56028/10)*

The applicant, M.D., is a Guinea-Bissau national who was born in 1979 and lives in Brussels. The case concerned his placement in a closed centre with a view to his deportation to Greece, which he claimed would put him at risk of ill-treatment. On 26 April 2010, after he had lodged an asylum request with the Belgian authorities, a decision was issued refusing M.D. permission to remain and ordering him to leave the country. He was placed in a closed centre. On 6 May 2010, after he had appealed against the order for his removal to Athens, the applicant was made the subject of a second detention order. On 2 July 2010, after his first two applications for release had been rejected, his detention was again extended for a maximum of two months. On 12 July 2010 he lodged a third request for release, citing the extension order of 2 July 2010. Although the Court of Appeal ordered his immediate release, he was kept in detention because of an appeal on points of law lodged by the Belgian State. In a judgment dated August 2010 the Court of Cassation quashed the Court of Appeal judgment on procedural grounds and remitted the case to the Indictments Chamber. M.D. was eventually released on 3 September 2010 on expiry of the statutory two-month period. On 15 September 2010 the Indictments Chamber observed that the applicant's request for release had become devoid of purpose following his release. Relying, among other provisions, on Article 5 § 4 (right to a speedy review of the lawfulness of detention), the applicant alleged that the remedies he had attempted in order to challenge the lawfulness of his detention had not enabled him to obtain a speedy judicial decision concerning his detention and had not been effective. He further alleged that his deportation to Greece would place him at risk of treatment in breach of Article 3 (prohibition of inhuman or degrading treatment) and that he had not had an effective remedy, in breach of Article 13 (right to an effective remedy).

Violation of Article 5 § 4

Complaint under Articles 3 and 13 struck out under Article 37 § 1 b) of the Convention

Just satisfaction: 5,000 euros (EUR) (non-pecuniary damage) and EUR 3,000 (costs and expenses)

Topčić-Rosenberg v. Croatia (no. 19391/11)

The applicant, Diana Topčić-Rosenberg, is a Croatian national who was born in 1962 and lives in Zagreb. The case concerned Ms Topčić-Rosenberg's right to paid maternity leave. While working as a self-employed businesswoman, she adopted a three year-old child in October 2006. Shortly afterward she applied to the Croatian Health Insurance Fund for paid maternity leave. However, her application was rejected, on the grounds that this was only available for biological mothers until the child's first birthday, and adoptive parents had to be treated equally to biological mothers. Ms Topčić-Rosenberg appealed the decision multiple times, arguing that it was incompatible with Croatian legislation and that she had been discriminated against. However, she was unsuccessful, and her final appeal was dismissed by the Croatian Constitutional Court in February 2011. Relying on Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life), Ms Topčić-Rosenberg complained that she had been discriminated against as an adoptive mother and a self-employed businesswoman.

Violation of Article 14 read in conjunction with Article 8

Just satisfaction: EUR 7,000 (non-pecuniary damage) and EUR 3,500 (costs and expenses)

Z.M. v. France (no. 40042/11)*

The applicant, Z.M., is a Congolese national who was born in 1958 and lives in Orléans (France). The case concerned his expulsion from France to the Democratic Republic of Congo ("the DRC"), which

he claimed would place him at risk of ill-treatment. After officially joining the Mouvement de Libération du Congo (“the MLC”) in 2005, Z.M. produced several political cartoons on the party’s behalf. He claimed that he had been arrested in July 2006 and detained for three weeks in an overcrowded prison cell where he had been denied access to a judge or lawyer and, among other things, had been deprived of sleep and food. He also claimed to have undergone a series of interrogations during which he had been burned with cigarettes and then whipped. After escaping from prison he took refuge in Matadi in a bid to evade the authorities, who were actively searching for him. He then resumed his activities as a cartoonist and campaigner with the MLC and other opposition parties. In April 2008, after learning that the authorities were once more looking for him, he left the DRC and travelled to France. After his first asylum application was rejected, he lodged an application in August 2011 to have it reviewed. The French authorities refused him leave to remain in France and served him with an order to leave the country. As a result, the applicant learned that his asylum application had been rejected. The appeal he lodged against that decision was declared inadmissible and he was placed in an administrative detention centre. In June 2011 his asylum application was again refused. Following a request for interim measures (under Rule 39 of the Rules of Court) made by the applicant, the European Court of Human Rights decided to indicate to the French Government that it was desirable to refrain from deporting him to the DRC for the duration of the proceedings before it. In July 2011 the order for Z.M.’s administrative detention was lifted and he was made the subject of a compulsory residence order. The applicant alleged mainly that his deportation to the DRC would place him at risk of treatment contrary to Article 3 (prohibition of inhuman or degrading treatment).

Violation of Article 3 in the event of Z.M.’s being expelled to DRC

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

Just satisfaction: The Court held that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage suffered by the applicant. It awarded Z.M. EUR 1,150 for costs and expenses.

Kasymakhunov v. Russia (no. 29604/12)

The applicant, Yusup Kasymakhunov, is an Uzbek national who was born in 1964. His current whereabouts are unknown. The case essentially concerned Mr Kasymakhunov’s alleged abduction and transfer from Russia to Uzbekistan where he had been wanted on charges of being a member of Hizb-ut Tahrir, a radical Islamic organisation banned in Uzbekistan and Russia.

Mr Kasymakhunov left Uzbekistan for Russia in 1995. He was arrested in Moscow in February 2004 and placed in detention pending extradition to Uzbekistan. The extradition proceedings were suspended pending criminal proceedings brought against him in Russia for, among other offences, aiding and abetting terrorism. He was found guilty and sentenced to seven years and four months’ imprisonment, upheld in a final judgment of January 2005. He finished serving his prison term in June 2011 but his continued detention was ordered pending the resumed extradition proceedings. His extradition was ordered by the Russian authorities in a decision eventually upheld by the courts in July 2012, but its enforcement was stayed following an interim measure granted by the European Court of Human Rights (under Rule 39 of its Rules of Court) indicating to the Russian Government that Mr Kasymakhunov should not be extradited for the duration of the proceedings before the Court. Mr Kasymakhunov was then released on 10 December 2012 as the maximum detention period allowed under domestic law had expired. On 14 December 2012, he telephoned a neighbour to say he needed to borrow a screwdriver but never turned up. His family and legal representatives have had no news of him since. According to Uzbekistan Airways he left Moscow for Tashkent (Uzbekistan) on board a regular flight on 14 December at 11.45 p.m.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Article 5 § 1 (f) (right to liberty and security) and Article 13 (right to an effective remedy), Mr Kasymakhunov initially complained

that, if returned to Uzbekistan, he would run a real risk of being subjected to ill-treatment and that his detention pending extradition had been excessively long. His representatives added to these complaints, also referring to Article 3, alleging that Mr Kasymakhunov had been abducted and transferred to Uzbekistan against his will, that the Russian authorities must have somehow been involved in the abduction and that their investigation into the matter had been ineffective. The representatives further complained that Mr Kasymakhunov's removal to Uzbekistan despite the interim measure indicated by the European Court of Human Rights amounted to a breach of Article 34 (right of individual petition).

Violation of Article 3 on account of the authorities' failure to protect the applicant against a real and imminent risk of torture and ill-treatment by preventing his forcible transfer from Russia to Uzbekistan, and the lack of an effective investigation into the incident

No violation of Article 5 § 1 (f)

Violation of Article 34

Just satisfaction: EUR 30,000 (non-pecuniary damage) and EUR 20,000 (costs and expenses)

Kozlitin v. Russia (no. 17092/04)

The applicant, Vitaliy Kozlitin, is a Russian national who was born in 1976 and is currently serving a 20-year prison sentence for robbery and aggravated murder in a correctional colony in the Kaliningrad region (Russia). The case concerned Mr Kozlitin's complaint about the unfairness of the criminal proceedings against him, which had ended with a judgment by the Supreme Court on 18 December 2003. Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to defend oneself in person), Mr Kozlitin complained in particular that the courts had refused his request to take part in the Supreme Court's appeal hearing on his case. He alleged that he had been therefore deprived of an opportunity to present his arguments that not only had he had an alibi for the crimes of which he had stood accused but also that his co-defendant had confessed before the trial court to having committed the murder himself.

Violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c)

Just satisfaction: EUR 4,000 (non-pecuniary damage)

Ryabtsev v. Russia (no. 13642/06)

The applicant, Oleg Ryabtsev, is a Russian national who was born in 1967 and lives in the town of Perm (Russia). The case concerned Mr Ryabsev's allegations that he had been ill-treated during and after his arrest for robbery, and that the subsequent legal proceedings against him had been unfair. On 27 February 2004 he was arrested in a police sting operation during an attempted armed robbery of a shop in Perm. He had confessed to his participation in the crime, but Mr Ryabsev claimed that this was only after he had been beaten by police. Prosecutors refused to start criminal proceedings to investigate Mr Ryabsev's allegations on ten occasions. He was convicted of organised aggravated robbery in February 2005, and the Russian Supreme Court upheld his conviction in August 2005. Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Ryabsev complained that he had been ill-treated by police officers both during his arrest and while in police custody, and that no appropriate investigation into this had been carried out. He also relied on Article 6 § 1 (right to a fair trial) to complain that the criminal proceedings against him had been unfair because his conviction had been based on a forced confession.

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 3 (procedure)

Violation of Article 6 § 1

Just satisfaction: EUR 9,000 (non-pecuniary damage) and EUR 1,000 (costs and expenses)

Aleksandr Nikonenko v. Ukraine (no. 54755/08)

The applicant, Aleksandr Nikonenko, is a Ukrainian national who was born in 1958 and lives in Zaporizhzhya (Ukraine). The case concerned the authorities' investigation into Mr Nikonenko's complaint about being beaten up on 21 July 2001 by a private individual at a market. Mr Nikonenko complained in particular that the authorities' investigation into his complaint, which had been suspended and reopened on numerous occasions because his aggressor could not be identified, had been ineffective. He alleged that as a result his case – which was neither legally nor factually complex – was eventually closed as time-barred on 20 August 2008. He relied notably on Article 3 (prohibition of inhuman or degrading treatment).

Violation of Article 3 (procedure)

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 700 (costs and expenses)

Shmushkovych v. Ukraine (no. 3276/10)

The applicant, Mykhaylo Shmushkovych, is a Ukrainian national who was born in 1979 and lives in Odessa (Ukraine). He is the vice-president of a non-governmental organisation and a member of the Odessa City Council. The case concerned in particular the imposition of a fine on Mr Shmushkovych for failing to give the local authorities sufficient advance notification of a peaceful picket which the organisation intended to hold. The picket, which demanded that the construction of some residential buildings contracted by the City Council be completed, was held on 19 March 2009, two days after he had notified the authorities. The judgment imposing the fine was upheld on appeal in July 2009. Mr Shmushkovych complained that the imposition of the fine had violated his right under Article 11 (freedom of assembly and association). Further relying on Article 6 § 1 (right to a fair trial), he complained that the first-instance court's judgment had not been pronounced in public.

Violation of Article 11

No violation of Article 6 § 1

Just satisfaction: EUR 2,000 (non-pecuniary damage)

Skorokhodov v. Ukraine (no. 56697/09)

The applicant, Dmitriy Skorokhodov, is a Ukrainian national who was born in 1981 and lives in Kharkiv (Ukraine). The case concerned the investigations by the Ukrainian authorities in relation to an alleged physical attack on Mr Skorokhodov by his colleagues which took place in November 2005. Investigations into the alleged attack were opened in June 2006 after the police, on several occasions, had refused to open them. They were still pending as of 2 July 2012. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Skorokhodov complained that there had been no effective investigation into his ill-treatment and that the proceedings had been excessively long without providing him with an opportunity to obtain compensation for the attack.

Violation of Article 3 (procedure)

Just satisfaction: EUR 7,500 (non-pecuniary damage)

Repetitive case

The following case raised issues which had already been submitted to the Court.

Shevchenko v. Russia (no. 11536/04)

The applicant in this case complained about the non-enforcement of a judgment in her favour concerning the calculation of her pension. She relied on Article 6 § 1 (right to a fair hearing) and

Article 1 of Protocol No. 1 (protection of property).

No violation of Article 6 § 1

No violation of Article 1 of Protocol No. 1

Length-of-proceedings case

In the following case, the applicant complained in particular under Article 6 § 1 (right to a fair hearing within a reasonable time) about the excessive length of non-criminal proceedings.

Triantafyllou v. Greece (no. 26021/10)*

The case concerned the expropriation by the Greek authorities of land belonging to the applicant. Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), the applicant complained of the allegedly excessive length of the proceedings before the domestic courts by which he sought to have the expropriation order set aside. Relying on Article 13 (right to an effective remedy), he further alleged that he had not had a domestic remedy by which to complain of the excessive length of the proceedings.

Violation of Article 6 § 1

Violation of Article 13

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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.