



Judgments concerning Greece, Russia, Sweden, and Ukraine

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

One repetitive case², 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 judgments in the cases of Labassee v. France (application no. 65941/11), Mennesson v. France (no. 65192/11), and Shcherbina v. Russia (no. 41970/11), for which separate press releases have been issued.

De los Santos and de la Cruz v. Greece (applications nos. 2134/12 and 2161/12)*

The applicants, Mariana de los Santos and Angela de la Cruz, are nationals of the Dominican Republic who were born in 1962 and 1979 respectively. The case concerned the conditions in which they had been detained prior to their expulsion from Greece.

They were arrested on 10 August 2011 for illegal entry and placed in detention with a view to their deportation in the premises of the Thessaloniki department for illegal immigration. The applicants stated, in particular, that they had been detained in an overcrowded cell which had been insufficiently lit on account of a metal grill covering the windows. They also submitted that the sum of 5.87 euros allocated to them per day had not enabled them to purchase a meal each. The applicants were transferred on 1 and 22 September respectively to the Aliens Directorate of Attica, from where they were deported a few days later. They submitted that, in this last detention facility, it had been impossible to breathe on account of smoke from the detainees' cigarettes, and they described numerous sanitary and hygiene problems, particularly the fact that there had been only a single shower and a single toilet for all of the female detainees.

The applicants complained about all of these conditions of detention under Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

Violation of Article 3 – concerning the applicants' conditions of detention in the premises of the Thessaloniki department for illegal immigration

Just satisfaction: 6,500 euros (EUR) each to Ms de los Santos and Ms de la Cruz (non-pecuniary damage)

Egamberdiyev v. Russia (no. 34742/13)

The applicant, Fayzullo Egamberdiyev, is a national of Uzbekistan who was born in 1975 and is currently in custody in the Omsk Centre for Social Adaptation. The case concerned proceedings for his removal from Russia to Uzbekistan.

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.

Having arrived in Russia in November 2008, Mr Egamberdiyev was arrested in Omsk on 22 February 2013 and charged with using a false passport and illegally crossing the Russian border. Subsequently he was placed in detention pending extradition, as he was wanted by the Uzbek authorities on suspicion of being a member of an extremist religious organisation (Nurchilar). The custodial preventive measure against him was lifted on 23 May 2013 but he remained in detention until 6 June 2013 when he was transferred to police custody pending criminal proceedings brought against him on the false passport charges. He was found guilty in those proceedings on 17 September 2013 and, sentenced to a fine, was released.

In September 2013, he was re-arrested on the basis of an expulsion order against him issued on 23 May 2013 and placed in custody pending expulsion where he remains to this day. His removal has been suspended on the basis of an interim measure granted by the European Court of Human Rights on 31 May 2013 under Rule 39 of its Rules of Court, which indicated to the Russian Government that he should not be removed pending the current proceedings before the European Court.

Mr Egamberdiyev's application for refugee status, alleging a risk of persecution on religious grounds, was rejected by the migration service in September 2013.

Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Egamberdiyev alleged that, if returned to Uzbekistan, he would face a real risk of torture and ill-treatment. He also alleged under Article 5 § 1 (f) (right to liberty and security) that his detention pending administrative removal after 23 May 2013 had been unlawful, claiming that the real purpose of the expulsion proceedings had been to keep him in custody pending the outcome of the extradition proceedings.

Violation of Article 3 – in the event of Mr Egamberdiyev's forced return to Uzbekistan

Violation of Article 5 § 1 (f) – in respect of Mr Egamberdiyev's detention in the framework of the expulsion proceedings

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

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 5,000 (costs and expenses)

Gablishvili v. Russia (no. 39428/12)

The applicants, Aleksandre and Irina Gablishvili, husband and wife, were born in 1981 and 1987, respectively, and live in Syktyvkar in the Komi Republic of Russia. The case concerned an expulsion order against Mr Gablishvili.

Mr Gablishvili, a Georgian national, arrived in Russia in 1999 when he was 18 years' old, and subsequently received a residence permit which has been extended at regular intervals ever since. He married the second applicant, a Russian national, in 2011 and they have a son, who was born in 2012. His parents also settled in Russia in the early 2000s and have since obtained Russian nationality. Mr Gablishvili was diagnosed with HIV in June 2011.

Mr Gablishvili's expulsion was ordered in December 2011 by an administrative court when he was found guilty of a drugs offence and, as an automatic consequence, his residence permit was revoked in June 2012. A decision was also issued in October 2012 declaring his presence in Russia undesirable on account of the drugs offence of 2011, discontinued criminal proceedings against him in 2003 and other misdemeanours, including public drunkenness and drug consumption.

Relying in particular on Article 8 (right to respect for private and family life), the applicants alleged notably that the enforcement of the expulsion order against Mr Gablishvili would break apart their family and would have a negative impact on his treatment for HIV infection.

Violation of Article 8 – in respect of Mr and Ms Gablishvili, in the event of the expulsion or exclusion order against Mr Gablishvili being enforced

Just satisfaction: The Court held that the finding of a potential violation constituted sufficient just satisfaction.

Krupko and Others v. Russia (no. 26587/07)

The case concerned the disruption of a Jehovah's Witness religious meeting by armed riot police and the detention of its participants.

The applicants, Nikolay Krupko, Dmitriy Burenkov, Pavel Anorov, and Nikolay Solovyov, are Russian nationals who are Jehovah's Witnesses belonging to various congregations in Moscow.

On 12 April 2006 four hundred people, including the four applicants, were about to celebrate the annual Memorial of the Lord's Evening Meal, the most solemn and significant religious meeting for Jehovah's Witnesses, when the police arrived in substantial numbers and cordoned off the university building rented for the occasion. 14 men, including the four applicants, from the congregation were segregated from the rest of the group and, taken to minibuses under police escort, were driven to the local police station where they remained for about three hours, until after midnight.

The four applicants brought proceedings before the national courts to complain in particular about the disruption to their service and their detention in the police station. The courts held, in a final judgment of March 2007, that the police had lawfully stopped the service as it had been held on unsuitable premises under domestic law and that the three hours spent by the applicants at the police station could not be considered as detention.

Relying on Article 5 (right to liberty and security), the applicants complained about the unlawfulness of their arrest and detention on 12 April into the early hours of the following morning, claiming that they had not been invited to the police station, as alleged, and had had no choice but to follow the police otherwise they would have been accused of resisting the police. Further relying on Article 9 (freedom of thought, conscience, and religion), the applicants complained about the disruption to their religious meeting by the police, pointing out in particular that their service, a solemn religious rite, could not have caused any major noise or disturbance and that the massive display of police force and vehicles had suggested that the police intervention had been a well-planned raid aimed at harassing Jehovah's Witnesses in Moscow.

Violation of Article 5

Violation of Article 9

Just satisfaction: EUR 30,000 to the four applicants jointly (non-pecuniary damage) and EUR 6,000 jointly (costs and expenses)

M.E. v. Sweden (no. 71398/12)

The applicant, Mr M.E., is a Libyan national who is currently living in Sweden. The case concerned Mr M.E.'s threatened expulsion from Sweden to Libya, where he alleged he would be at risk of persecution and ill-treatment because he is a homosexual.

Mr M.E. first arrived in Sweden in July 2010 and applied for asylum. In the ensuing domestic proceedings, he claimed that he was at risk if deported to Libya on account of his prior involvement in the country in illegal weapons transport and because of his homosexuality. Indeed, he had been living with a man in Sweden since December 2010 and they had married in September 2011. His case was examined by the Migration Board, the Migration Court and the Migration Court of Appeal, which found that his claims, which had altered and escalated throughout the proceedings, lacked credibility. Ultimately, the Migration Board rejected his request for reconsideration in

December 2012, which concluded that he could temporarily return to Libya and from there could apply for family reunion with his partner.

Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr M.E. alleged that, if he were forced to return to Libya to apply for family reunion from there, he would be at real risk of persecution and ill-treatment, primarily because of his homosexuality but also due to previous problems with the Libyan military authorities following his arrest for smuggling illegal weapons.

No violation of Article 3 – in the event of the applicant’s expulsion to Libya

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

Sukhanov and Ilchenko v. Ukraine (nos. 68385/10 and 71378/10)

The case concerned the authorities’ failure to pay pension supplements.

The applicants, Gennadiy Sukhanov and Viktor Ilchenko, are Ukrainian nationals who were both born in 1938 and live in the city of Lugansk and in the town of Zhovti Vody, Ukraine, respectively. Under Ukrainian law they both have the special status of “children of war”, namely persons who were no more than 18 years of age as of the date 2 September 1945.

Both applicants brought proceedings in 2008/2009 against the Ukrainian Pension Fund, claiming that they were entitled under the Children of War Social Protection Act to receive pensions with a supplement of 30% of the minimum pension. The courts ruled in the applicants’ favour but held that, under the State Budget Act 2006, the supplement had been suspended and that it was for the Cabinet of Ministers to set up a mechanism for the relevant pension increase. No such mechanism has since been set up.

Relying on Article 1 of Protocol No. 1 (protection of property), both applicants complained about the authorities’ failure to pay them the pension supplement to which they were entitled.

Violation of Article 1 of Protocol No. 1 – in respect of the period between 2 April 2006 and 31 December 2006

Just satisfaction: EUR 900 each to Mr Sukhanov and Mr Ilchenko (non-pecuniary damage), and EUR 880 to Mr Sukhanov and EUR 16 to Mr Ilchenko (costs and expenses)

Repetitive case

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

***Livada v. Ukraine* (no. 21262/06)**

The case concerned the applicant’s complaints under Article 5 §§ 1, 3 and 4 (right to liberty and security) about the unlawfulness and excessive length of his pre-trial detention without effective judicial review.

Violation of Article 5 §§ 1, 3 and 4

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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.